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NEW DELHI, SATURDAY, JULY 1, 1995/ASADHA 10, 1917

इस भाग में भिन्न पृष्ठ सख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

वित्त मंत्रालय
(राजस्व विभाग)
आदेश

नई दिल्ली, 14 जून, 1995

प्रयोग करने हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस
आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर
पुलिस आयुक्त/डायरेक्टर जनरल पुलिस, जयपुर के समक्ष
हजरि हों।

[फा. सं. 673/146/93—जी. ए. —8]

ए. के. गिन्हा, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 14th June, 1995

का.आ. 1774.—भारत सरकार के संयुक्त सचिव ने
जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम,
1974 (1974 का 52) की धारा 3 की उपधारा के अधीन
आदेश फा.सं. 673/146/93—सी.ए. —8, दिनांक 10-1-1994
को यह निर्देश जारी किया था कि श्री मूल चन्द सुपुत्र
श्री डालाजी सोनी पता: कैलाश धाम मन्दिर के पीछे, बीच्चारपुर,
पालनपुर, गुजरात को निरुद्ध कर लिया जाए और
केन्द्रीय कारागार, जोधपुर में अभिरक्षा में रखा जाए ताकि
उसे भविष्य में तस्करी माल के संवहन, छुपाने एवं व्यवहार
करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण
है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा
रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा
7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का

S.O. 1774.—Whereas the Joint Secretary to the Government
of India, specially empowered under sub-section (1) of section
3 of the Conservation of Foreign Exchange and Prevention
of Smuggling Activities Act, 1974 (52 of 1974) issued order
F. No. 673/146/93-Cus. VIII dated 10-1-1994 under the said
sub-section directing that Shri Mool Chand S/o Shri Dalaji
Soni R/o Behind Kailash Dham Temple, Becharpur, Palan-
pur (Gujarat) be detained and kept in custody in the Central
Prison Jodhpur with a view to preventing him from engaging
in transporting and concealing and dealing in smuggling
goods in future.

2. Whereas the Central Government has reasons to believe
that the aforesaid person has absconded or is concealing
himself so that the order cannot be executed:

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner/Director General of Police, Jaipur within 7 days of the publication of this order in the official Gazette.

[F. No. 673/146/93-Cus. VIII]

A. K. SINHA, Under Secy.

आदेश

नई दिल्ली, 14 जून, 1995

का.आ. 1775.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा. सं. 673/123/93-पी. शु.-3, दिनांक 23-11-1993 को यह निदेश जारी किया था कि श्री मोहम्मद शफी शाह सुपुत्र श्री गुलाम मोहम्मद उर्फ गुलाम मुमा शाह पता: हजरत बाल (ग्रीवार्ड के पास) श्रीनगर, जम्मू एवं काश्मीर को निरुद्ध कर लिया जाए और केन्द्रीय कारागार, श्रीनगर में अभिरक्षा में रखा जाए ताकि उसे भविष्य में तस्करीत माल के संवहन से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त/डायरेक्टर जनरल पुलिस, जम्मू एवं काश्मीर के समक्ष हाजिर हों।

[फा. सं. 673/123/93-सी. शु.-8]

ए. के. सिन्हा, अवर सचिव

ORDER

New Delhi, the 14th June, 1995

S.O. 1775.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/123/93-Cus. VIII dated 23-11-1993 under the said sub-section directing that Shri Mohammed Shafi Shah S/o Sh. Gulam Mohammed @ Gulam Muma Shah R/o Hazara Bal (Near Graveyard) Srinagar, Jammu & Kashmir be detained and kept in custody in the Central Prison, Srinagar with a view to preventing him from engaging in transporting the smuggled goods in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner/Director General of Police J. & K. within 7 days of the publication of this order in the official Gazette.

[F. No. 673/123/93-Cus. VIII]

A. K. SINHA, Under Secy.

आदेश

नई दिल्ली, 15 जून, 1995

का.आ. 1776.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा. सं. 673/22/94-सी. शु.-8, दिनांक 12-4-1994 को यह निदेश जारी किया था कि श्री एच. पी. गोयल सुपुत्र स्वर्गीय श्री नारायण सिंह 10/3 डबल स्टोरी (दो मंजिल) प्रेम नगर, तिलक नगर, नई दिल्ली-110058 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार, तिहाड़, नई दिल्ली में अभिरक्षा में रखा जाए ताकि उसे भविष्य में माल की तस्करी करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त नई दिल्ली के समक्ष हाजिर हों।

[फा. सं. 673/22/94-सी. शु.-8]

ए. के. सिन्हा, अवर सचिव

ORDER

New Delhi, the 15th June, 1995

S.O. 1776.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/22/94-Cus. VIII dated 12-4-1994 under the said sub-section directing that Shri H. P. Goyal S/o Late Shri Nara'n Singh 10/3 Double Storey, Prem Nagar, Tilak Nagar, New Delhi-110058 be detained and kept in custody in the Central Prison Tihar, New Delhi with a view to preventing him from smuggling goods in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner/Director General of Police within 7 days of the publication of this order in the official Gazette.

[F. No. 673/22/94-Cus. VIII]

A. K. SINHA, Under Secy.

आदेश

नई दिल्ली, 15 जून, 1995

का.आ. 1777.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा. सं. 673/117/93—सा.शु. 8 दिनांक 1-11-1993 का यह निदेश जारी किया था कि श्री सवाई सिंह सुपुत्र श्री खेम सिंह :—

पता:—गांव—पान्चला, तहसील; सहेउ, जिला बाड़मेर, राजस्थान को निरुद्ध कर लिया जाए और केन्द्रीय कारागार, जोधपुर में अभिरक्षा में रखा जाए ताकि उसे भविष्य में तस्करीत माल को छुपाने, व्यवहार करने एवं संवहन करने अथवा तस्करीत माल को रखने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त/डायरेक्टर जनरल पुलिस, जयपुर के समक्ष हाजिर हो।

[फा.सं. 673/117/93-सी.शु.-8]

ए.के. सिन्हा, अवर सचिव

ORDER

New Delhi, the 15th June, 1995

S.O. 1777.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/117/93-Cus. VIII dated 1-11-1993 under the said sub-section directing that Shri Sawai Singh S/o Sh. Khim Singh R/o Village Panchla, Tehsil-Sheo, District Barmer, Rajasthan be detained and kept in custody in the Central Prison Jodhpur with a view to preventing him from engaging in transporting and concealing smuggled goods and dealing in smuggled goods otherwise than by engaging in keeping smuggled goods in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner/Director General of Police, Jaipur within 7 days of the publication of this order in the official Gazette.

[F. No. 673/117/93-Cus. VIII]

A. K. SINHA, Under Secy.

आदेश

नई दिल्ली, 15 जून, 1995

का.आ. 1778.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम,

1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा. सं. 673/122/94—सी.शु.—8 दिनांक 6-9-1994 को यह निदेश जारी किया था कि श्री रघुवीर सिंह सुपुत्र श्री हुकुम सिंह डी-75—ए, न्यू महावीर नगर, नई दिल्ली को निरुद्ध कर लिया जाए और केन्द्रीय कारागार, तिहाड़, नई दिल्ली में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संरक्षण के प्रतिहून कोई भी कार्य करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त, नई दिल्ली के समक्ष हाजिर हो।

[फा. सं. 673/122/94-सी.शु.—8]

रूप चन्द, अवर सचिव

ORDER

New Delhi, the 15th June, 1995

S.O. 1778.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/122/94-Cus. VIII dated 6-9-1994 under the said sub-section directing that Shri Ragubir Singh S/o Shri Hukam Singh D-75-A, New Mahavir Nagar, New Delhi be detained and kept in custody in the Central Prison Tihar, New Delhi with a view to preventing him in future from acting in any manner prejudicial to the conservation of foreign exchange.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, New Delhi within 7 days of the publication of this order in the official Gazette

[F. No. 673/122/94-Cus. VIII]

ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 15 जून, 1995

का.आ. 1779.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा. सं. 673/143/94—सी.शु. दिनांक 20-9-1994 को यह निदेश जारी किया था कि श्री जुगल किशोर उर्फ जुगल किशोर शर्मा सुपुत्र स्वर्गीय श्री बंसी लाल पता :— 24—सी, गौतम नगर, नई दिल्ली-110049 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार, तिहाड़, नई दिल्ली में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संवहन के प्रतिकूल कोई भी कार्य करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त/पुलिस, दिल्ली के समक्ष हाजिर हों।

[फा. सं. 673/143/94—सी.शु.-8]

रूप चन्द, अवर सचिव

ORDER

New Delhi, the 15th June, 1995

S.O. 1779.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/143/94-Cus. VIII dated 20-9-1994 under the said sub-section directing that Shri Jugal Kishore, Jugal Kishore Sharma, S/o Late Shri Bansi Lal, R/o 24-C, Gautam Nagar, New Delhi-49 be detained and kept in custody in the Central Prison Tihar, New Delhi with a view to preventing him in future from acting in any manner prejudicial to the augmentation of foreign exchange.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Delhi within 7 days of the publication of this order in the official Gazette.

[F. No. 673/143/94-Cus. VIII]

ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 15 जून, 1995

का.अ. 1780—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा. सं. 673/206/94 सी.शु.-8, दिनांक 12-12-1994 को यह निर्देश जारी किया था कि श्री संजय ए. बावीशी सुपुत्र के. एम. बावीशी, कमरा नं. 8/9, गड्डर स्ट्रीट, देव भवन, जे० एस्० एस्० रोड, चित्रा बाजार बम्बई-400002 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार बम्बई में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संवर्धन के प्राकृत कोई भी कार्य करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त

शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त/डायरेक्टर जनरल पुलिस बम्बई के समक्ष हाजिर हो।

[फा. सं. 673/206/94-सी.शु.-8]

रूप चन्द, अवर सचिव

ORDER

New Delhi, the 15th June, 1995

S.O. 1780.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/206/94-Cus. VIII dated 12-12-1994 under the said sub-section directing that Shri Sanjay A. Bavishi S/o Shri K. M. Bavishi Room No. 8/9, Gaddar Street, Dev Bhanvan, J.S.S. Road, Chitra Bazar, Bombay-400002 be detained and kept in custody in the Central Prison Bombay with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Bombay within 7 days of the publication of this order in the official Gazette.

[F. No. 673/206/94-Cus. VIII]

ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 20 जून, 1995

का.अ. 1781—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा. सं. 673/7/94-सी.शु.-8 दिनांक 2-2-1994 को यह निर्देश जारी किया था कि श्री हरदीप सिंह सुपुत्र श्री पूरण सिंह, जी-97, सन्त नगर, चोखण्डी, तिलक नगर, नई दिल्ली को निरुद्ध कर लिया जाए और केन्द्रीय कारागार तिहाड़, में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संरक्षण के अनुकूल कार्य करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके।

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त/डायरेक्टर जनरल पुलिस, नई दिल्ली के समक्ष हाजिर हों।

[फा. सं. 673/7/94-सी.शु.-8]

रूप चन्द, अवर सचिव

ORDER

New Delhi, the 20th June, 1995

S.O. 1781.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/7/94-Cus. VIII, dated 2-2-1994 under the said sub-section directing that Shri Hardeep Singh S/o Sh. Puran Singh, G-97, Sant Nagar, Chowkhanadi, Tilak Nagar, New Delhi be detained and kept in custody in the Central Prison, Tihar with a view to preventing him from acting in any manner prejudicial to the conservation of foreign exchange in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner/Director General of Police, Bombay within 7 days of the publication of this order in the official Gazette.

[F. No. 673/7/94-Cus. VIII]

ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 20 जून, 1995

का.आ. 1782.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा.सं. 673/101/94-सी.शु.-8 दिनांक 24-6-1994 को यह निर्देश जारी किया था कि श्री छगनलाल बिनानी सपुत्र स्वर्गीय श्री भगवती राम बिनानी मैमर्स हंडो एयर कूरियर, पी-12, न्यू हावड़ा ब्रिज, अपरोच रोड, प्रथम तल, कलकत्ता-700007 (2) गांव-झूगरगढ़, पी.एस. दिगारगढ़, जिला चुरू, राजस्थान को निरुद्ध कर लिया जाए और केन्द्रीय कारागार प्रेजीडेन्सी जेल, अलीपुर, कलकत्ता में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संवर्धन के अनुकूल कार्य करने से रोका जा सके।

3. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त/डायरेक्टर जनरल पुलिस, पश्चिम बंगाल, कलकत्ता के समक्ष हाजिर हो।

[फा. सं. 673/101/94-सी.शु.-8]

रूप चन्द, अवसर सचिव

ORDER

New Delhi, the 20th June, 1995

S.O. 1782.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/101/94-Cus. VIII dated 24-6-1994 under the said sub-section directing that Shri Chaganlal Binani S/o Late Shri Bhagwani Ram Binani M/s. Indo Air Courier, P-12, New Howrah Bridge, Approach Road, 1st Floor, Calcutta-700007.

(i) Village-Dungargarh, P. S. Dingargarh, Distt. Churu, Rajasthan, be detained and kept in custody in the Presidency Jail, Alipore, Calcutta with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner/Director General of Police, West Bengal, Calcutta within 7 days of the publication of this order in the official Gazette.

[F. No. 673/101/94-Cus. VIII]

ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 20 जून, 1995

का.आ. 1783.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश फा. सं. 673/127/94-सी.शु.-8 दिनांक 5-9-94 को यह निर्देश जारी किया था कि श्री इब्राहीम मोहम्मद उर्फ अब्दुल युसमान, थोताथिल हाउस, मादापारली कॉलेज, पी.ओ. वाया वादागरा, कालोकेट डिस्ट्रिक्ट, केरला को निरुद्ध कर लिया जाए और केन्द्रीय कारागार, त्रिवेन्द्रम में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संरक्षण के अनुकूल कार्य करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त/डायरेक्टर जनरल पुलिस, केरला, त्रिवेन्द्रम के समक्ष हाजिर हो।

[फा. सं. 673/127/94-सी.शु.-8]

रूप चन्द, अवसर सचिव

ORDER

New Delhi, the 20th June, 1995

S.O. 1783.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/127/94-Cus. VIII dated 5-9-1994 under the said sub-section directing that Shri Ibrahim Mohd., @ Abdul Usman, Thotathil House, Madapally College P.O., Via-Vadagara, Calicut District, Kerala be detained and kept in custody in the Central Prison, Trivandrum with a view to preventing him from acting in any manner prejudicial to the conservation of foreign exchange in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner/Director General of Police, Kerala, Trivandrum within 7 days of the publication of this order in the Official Gazette.

[F. No. 673/127/94-Cus. VIII]

ROOP CHAND, Under Secy.

आदेश

नई दिल्ली, 20 जून, 1995

का.प्रा. 1784.—भारत सरकार के संयुक्त सचिव ने जिसे विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा के अधीन आदेश का.सं. 673/204/94-सी.शु.-8 दिनांक 14-12-1994 को यह निदेश जारी किया था कि श्री हेमराज करुणाकर ए-25, सिन्धर वली, बुलसुरेस कालोनी रोड, वाकोला, बम्बई 55 (2) मैनेजिंग डायरेक्टर, मीसर्स इन्डोकरन ओवरसीज (1) प्रा. लि. अजन्ता कमप्लेक्स जुहु तारा रोड, बम्बई-400049 को निरुद्ध कर लिया जाए और केन्द्रीय कारागार बम्बई में अभिरक्षा में रखा जाए ताकि उसे भविष्य में विदेशी मुद्रा के संवर्धन के अनुकूल कार्य करने से रोका जा सके।

2. केन्द्रीय सरकार के पास यह विश्वास करने का कारण है कि पूर्वोक्त व्यक्ति फरार हो गया है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके;

3. अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि पूर्वोक्त व्यक्ति इस आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिस आयुक्त/डायरेक्टर जनरल पुलिस, बम्बई के समक्ष हाजिर हों।

[का. सं. 673/204/94-सी.शु.-8]

रूप चन्द, अवर सचिव

ORDER

New Delhi, the 20th June, 1995

S.O. 1784.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (1) of section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued order F. No. 673/204/94-Cus. VIII dated 14-12-1994 under the said sub-section directing that Shri Hemraj Karunakar, A-25, Silver Valley, Bulsroyce Colony Road, Vakula, Bombay-55, (ii) Managing Director, M/s. Indikern Overseas (I) Pvt. Ltd., Ajanta Complex, Juhu Tara Road, Bombay-400049 be detained and kept in custody in the Central Prison, Bombay with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange in future.

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now therefore, in exercise of the powers conferred by clause (b) of sub-section (1) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner/Director General of Police, Bombay within 7 days of the publication of this order in the official Gazette.

[F. No. 673/204/94-Cus. VIII]

ROOP CHAND, Under Secy.

(आर्थिक कार्य विभाग)

नई दिल्ली 16 जून, 1995

का.प्रा. 1785 :—केन्द्रीय सरकार राजभाषा (सब के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली 1976 के नियम-10 के उप-विषय (4) के अन्वय में वित्त संचालन, आर्थिक कार्य विभाग के प्रशासनिक नियंत्रण में स्थित भारतीय जीवन बीमा निगम के निम्नलिखित

कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारी हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है अधिसूचित करते हैं :—

1. मण्डल कार्यालय, नडियाद
2. शाखा कार्यालय-846, नडियाद
3. शाखा कार्यालय-83-जी, नडियाद
4. शाखा कार्यालय-845, आनन्द
5. शाखा कार्यालय-83-ए, आनन्द
6. शाखा कार्यालय, ठासरा
7. शाखा कार्यालय, पेटलाद
8. शाखा कार्यालय, खम्बहत
9. शाखा कार्यालय, कपडवान
10. शाखा कार्यालय, बोरसव
11. शाखा कार्यालय, उमरेठ
12. शाखा कार्यालय, खेड़ा
13. शाखा कार्यालय, गोधरा
14. शाखा कार्यालय, लुणवाडा
15. शाखा कार्यालय, दाहोद
16. शाखा कार्यालय, हानोज
17. शाखा कार्यालय, सतरामपुर
18. शाखा कार्यालय, सीम खेड़ा
19. शाखा कार्यालय, बालाशिनोर
20. मण्डल कार्यालय, भावनगर
21. शहर शाखा कार्यालय, भावनगर
22. शाखा कार्यालय, धमरेजी
23. शाखा कार्यालय, सुरेन्द्रनगर
24. शाखा कार्यालय, धौगडा
25. शाखा कार्यालय, बोटद
26. शाखा कार्यालय, महुवी
27. शाखा कार्यालय, सिहोर
28. शाखा कार्यालय, सावर कुंडवा
29. शाखा कार्यालय, चित्रा
30. शाखा कार्यालय, लिम्बई

[सं. 11013/4/94-वि.का.क.]

सुधीर कुमार वर्मा, अवर सचिव

(Department of Economic Affairs)

New Delhi, the 16th June, 1995

S.O. 1785.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rule, 1976, the Central Government hereby notifies the following offices of the Life Insurance Corporation of India, under the Administrative control of Ministry of Finance, Department of Economic Affairs, where of more than 80 per cent of staff have acquired working knowledge of Hindi.

1. Divisional Office, Nadiad
2. Branch Office-846, Nadiad
3. Branch Office-83-G, Nadiad
4. Branch Office-845, Anand
5. Branch Office-83-A, Anand
6. Branch Office, Thasra
7. Branch Office, Petlad
8. Branch Office, Khambhat
9. Branch Office, Kapadvanj

10. Branch Office, Borsad
11. Branch Office, Umreth
12. Branch Office, Kheda
13. Branch Office, Godhra
14. Branch Office, Lunavada
15. Branch Office, Dahod
16. Branch Office, Halol
17. Branch Office, Sant Rampur
18. Branch Office, Leem Kheda
19. Branch Office, Balashmor
20. Divisional Office, Bhavnagar
21. City Branch Office, Bhavnagar
22. Branch Office, Amreli
23. Branch Office, Surender Nagar
24. Branch Office, Dhrangdhara
25. Branch Office, Botad
26. Branch Office, Mhuvi
27. Branch Office, Sihor
28. Branch Office, Savar Kundla
29. Branch Office, Chitra
30. Branch Office, Limbdi.

[No. 11013/4/94-HIC]

S. K. VERMA, Under Secy.

नई दिल्ली, 16 जून, 1995

का.आ. 1786:—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली, 1976 के नियम-10 के उप-नियम (4) के अनुसरण में वित्त मंत्रालय, आर्थिक कार्य विभाग के प्रशासनिक नियंत्रण में स्थित भारतीय साधारण बीमा निगम के निम्नलिखित कार्यालयों को जिनके 80 प्रतिशत से अधिक कर्मचारीवृत्त ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करता है:—

कम्पनी का नाम : ओरिएंटल इश्योरेंस कम्पनी लिमिटेड

1. मंडल कार्यालय, शक्तिनगर (लखनऊ)
2. शाखा कार्यालय, मिर्जापुर
3. शाखा कार्यालय, लखनऊ
4. शाखा कार्यालय, रायबरेली
5. शाखा कार्यालय, हरदोई

[संख्या 11013/4/94-हि.का.क.]

सुधीर कुमार वर्मा, अवर सचिव

New Delhi, the 16th June, 1995

S.O. 1786.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rule, 1976, the Central Government hereby notifies the following offices of the General Insurance Corporation of India, under the Administrative control of Ministry of Finance, Department of Economic Affairs, where of more than 80 per cent of staff have acquired working knowledge of Hindi.

Name of the Company : The Oriental Insurance Co. Ltd.

1. Divisional Office, Shaktinagar (Lucknow)
2. Branch Office, Mirzapur
3. Branch Office, Lucknow
4. Branch Office, Raibareilly
5. Branch Office, Hardoi.

[No. 11013/4/94-HIC]

S. K. VERMA, Under Secy.

(बैंकिंग प्रभाग)

नई दिल्ली, 15 जून, 1995

का. आ. 1787.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड-3 के उपखंड (1) के साथ पठित बैंककारी कंठो (उत्तरों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उपधारा 3 के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा श्री अनूप मिश्रा, निदेशक, वित्त मंत्रालय, आर्थिक कार्य विभाग (बैंकिंग प्रभाग) को श्री के. श्रीनिवासन के स्थान पर बैंक आफ बड़ोदा में निदेशक के रूप में नामित करती है।

[सं. एक. 9/9/94—बी. ओ.-1]

के. के. मंगल, अवर सचिव

(Banking Division)

New Delhi, the 15th June, 1995

S.O. 1787.—In exercise of the powers conferred by clause (b) of sub-section 3 of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme 1970, the Central Government hereby nominates Shri Anoop Mishra, Director, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi, as a Director of Bank of Baroda vice Shri K. Srinivasan.

[F. No. 9/9/94-BO.I]

K. K. MANGAL, Under Secy.

नई दिल्ली, 15 जून, 1995

का. आ. 1788.—रुग्ण औद्योगिक कंठो (विशेष उपबंध) अधिनियम, 1985 (1986 का 1) की धारा 8 की उप धारा (2) के साथ पठित धारा 4 की उपधारा 2 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा श्री ए. के. पुरी, वर्तमान में प्रबंध निदेशक, भारतीय स्टेट बैंक को उनके कार्यभार ग्रहण करने की तारीख से 31-8-1997 तक की अवधि के लिए डा. महफुज

ग्रहमद के स्थान पर औद्योगिक तथा वित्तीय पुर्ननिर्माण बोर्ड के सदस्य के रूप में नियुक्त करती है।

[सं. 7/14/94—बी. ओ. I (IV)]

के. के. मंगल, अवर सचिव

New Delhi, the 15th June, 1995

S.O. 1788.—In pursuance of the powers conferred by sub-section (2) of section 4 read with sub-section (2) of section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), the Central Government hereby appoints Shri A. K. Puri presently Deputy Managing Director, State Bank of India as a Member of the Board for Industrial and Financial Reconstruction for the period from the date of his taking charge and upto 31st August, 1997 vice Dr. Mehfooz Ahmed.

[F. No. 7/14/94-BO.I(IV)]

K. K. MANGAL, Under Secy.

नई दिल्ली, 15 जून, 1995

का. आ. 1789.—रुग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1) की धारा 6 की उप धारा (2) के साथ पठित धारा 4 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा श्री बी. के. सिन्हा, भूतपूर्व सदस्य केन्द्रीय प्रत्यक्ष कर बोर्ड को उनके कार्यभार ग्रहण करने की तारीख से 31-5-1997 तक की अवधि के लिए औद्योगिक तथा वित्तीय पुर्ननिर्माण बोर्ड के सदस्य के रूप में नियुक्त करती है।

[सं. 7/14/94—बी. ओ. I (iii)]

के. के. मंगल, अवर सचिव

New Delhi, the 15th June, 1995

S.O. 1789.—In pursuance of the powers conferred by sub-section (2) of section 4 read with sub-section (2) of section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), the Central Government hereby appoints Shri B. K. Sinha, ex-Member, Central Board of Direct Taxes as a Member of the Board for Industrial and Financial Reconstruction for the period from the date of his taking charge and upto 31st May, 1997.

[F. No. 7/14/94-BO.I(iii)]

K. K. MANGAL, Under Secy.

नई दिल्ली, 15 जून, 1995

का. आ. 1790.—रुग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 (1986 का 1) की धारा 6 की उप धारा (2) के साथ पठित धारा 4 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा श्री एस. एल. कपूर, आई. ए. एस. (सेवानिवृत्त) को उनके कार्यभार ग्रहण करने की तारीख से 31-3-1997 तक की अवधि के लिए औद्योगिक तथा वित्तीय पुर्ननिर्माण बोर्ड के सदस्य के रूप में नियुक्त करती है।

[सं. 7/14/94—बी. ओ. I (ii)]

के. के. मंगल, अवर सचिव

New Delhi, the 15th June, 1995

S.O. 1790.—In pursuance of the powers conferred by sub-section (2) of section 4 read with sub-section (2) of Section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), the Central Government hereby appoints Shri S. L. Kapur, IAS (Retired) as a Member of the Board for Industrial and Financial Reconstruction for the period from the date of his taking charge and upto 31st March, 1997.

[F. No. 7/14/94-BO.I(ii)]

K. K. MANGAL, Under Secy.

नई दिल्ली, 15 जून, 1995

का. आ. 1791.—रुग्ण औद्योगिक कंपनी (विशेष उपबंध) अधिनियम, 1985 की धारा 6 की उपधारा (2) साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा डा. महफूज ग्रहमद, वर्तमान में औद्योगिक और वित्तीय पुर्ननिर्माण बोर्ड के सदस्य को, उनके कार्यभार ग्रहण करने की तारीख से तथा 30-6-1997 तक, औद्योगिक तथा वित्तीय पुर्ननिर्माण अपीलोय प्राधिकरण के सदस्य के रूप में नियुक्त करती है।

[सं. 7/14/94—बी. ओ. I (i)]

के. के. मंगल, अवर सचिव

New Delhi, the 15th June, 1995

S.O. 1791.—In pursuance of the powers conferred by sub-section (1) of section 5 read with sub-section (2) of Section 6 of the Sick Industrial Companies (Special Provisions) Act, 1985, the Central Government hereby appoints Dr. Mahfooz Ahmed presently Member, Board for Industrial and Financial Reconstruction as a Member of the Appellate Authority for Industrial and Financial Reconstruction for the period from the date of his taking charge and upto 30th June, 1997.

[F. No. 7/14/94-BO.I(i)]

K. K. MANGAL, Under Secy.

नई दिल्ली, 15 जून, 1995

का. आ. 1792.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सफाई पर, एतद्वारा, घोषणा करती है कि उक्त अधिनियम की धारा 19 की उप-धारा 2 के उपबंध पंजाब एंड सिंध बैंक पर 21 जनवरी, 1997 तक की अवधि के लिए उस सीमा तक लागू नहीं होंगे जहां तक उनका सम्बन्ध मिरचीदार के रूप में मैसर्स डायनामेटिक फॉर्जिंग्स इण्डिया लि. के शेयरों की धारिता से है।

[सं. 15/12/90—बी. ओ. -III]

बी. एल. सचदेव, अवर सचिव

New Delhi, the 15th June, 1995

S.O. 1792.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of sub-section 2 of Section 19 of the said Act, shall not apply to Punjab and Sind Bank for a period upto 21st January 1997 in so far as they relate to its holding of the shares of M/s. Dynamatic Forgings India Ltd., as pledgee.

[No. 15/12/90-B.O.III]

B. L. SACHDEVA, Under Secy.

विदेश मंत्रालय

MINISTRY OF INDUSTRY

(Department of Heavy Industry)

नई दिल्ली, 6 जून, 1995

New Delhi, the 15th June, 1995

का. आ. 1793.—राजनयिक कौंसली अधिकारी (शपथ एवम् शुल्क) अधिनियम, 1948 (1948 का 41वां) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का दूतावास, अशगाबात में सहायक श्री पी. के. जैन को 5 जून 95 में कौंसली एजेंट का कार्य करने के लिए प्राधिकृत करती है।

S.O. 1794.—In pursuance of sub-rule (4) of rule 10 of the Official Language (Use for official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office whereof 80 per cent staff have acquired the working knowledge of Hindi :—

[सं. टी—4330/1/95]

ओस्कर केरकेट्टा, अवर सचिव (कौंसली)

Bharat Heavy Electricals Ltd.,
Zonal Operation Division (Hqs.)
16th Floor, Hindustan Times House,
18—20, Kasturba Gandhi Marg,
New Delhi-110001.

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 6th June, 1995

S.O. 1793.—In pursuance of the Clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises, Shri P. K. Jain, Assistant in the Embassy of India, Ashgabat to perform the duties of Consular Agent with effect from 5th June, 95.

[No. E. 11012(1)/92-Hindi]

O. P. SHARVAR, Dy. Secy.

[No. T-4330/1/95]

OSCAR KERKETTA, Under Secy. (Consular)

नागरिक पूति, उपभोक्ता मामले और सार्वजनिक
वितरण मंत्रालय

नई दिल्ली, 12 जून, 1995

उद्योग मंत्रालय

(भारी उद्योग विभाग)

नई दिल्ली, 15 जून, 1995

का.आ. 1794:—केन्द्रीय सरकार, राजमार्ग (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में निम्नलिखित कार्यालय को, जिसके 30% कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

का.आ. 1795.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात् समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम, 1976 (1976 आ 60) और बाट और माप मानक (माडल का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि उक्त माडल लगातार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा;

(1) भारत हेवी इलेक्ट्रिकल्स लिमिटेड,

क्षेत्रीय प्रबालन प्रभाग (मुख्यालय),

16वीं मंजिल, हिन्दुस्तान टाइम्स हाउस,

18-20, कस्तूरबा गांधी मार्ग,

नई दिल्ली-110001

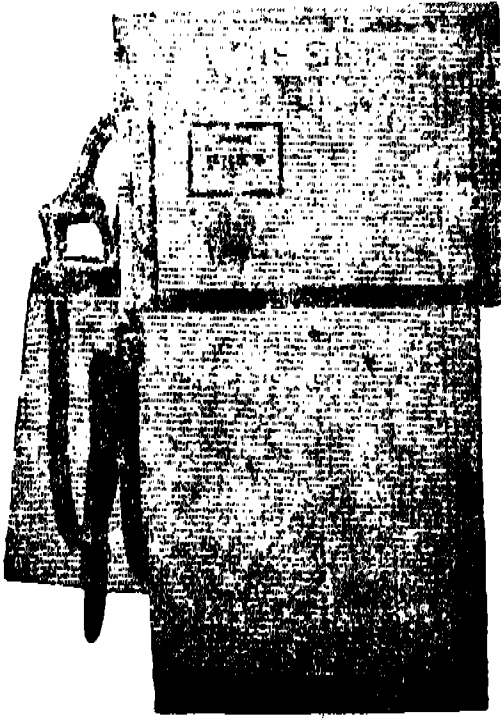
अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए "एम.आर.ए." (सीरीज 800 और 170) टाइप के यांत्रिक पंजिका संयोजन वाले योजक पंप के माडल का, (जिसे इसमें इसके पश्चात् माडल कहा गया है) जिसका विनिर्माण मैसर्स मकॅन्टाइल एण्ड इण्डस्ट्रियल डेवलपमेंट कंपनी लि. 39/44,

[सं. ई-11012/(1)/92-हिन्दी]

ओ. पी. शरवर, उप सचिव

स्कोम 4, रोड 2वीं ओनमुम्बई 400022 द्वारा किया गया है और जिसे अनुमोदन चिन्ह आई.एन.डी. 09/93/51

समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है;



माडल (आकृति देखिए) यांत्रिक पंजिका संयोजन टाइप का एक योजक पम्प है। भूमिगत उत्पाद पम्प के माध्यम से चूषण एकक के वायु पृथक्कारी खंड तक खींचा जाता है। निर्वायु उत्पाद, दाय नियंत्रक वाल्व के माध्यम से मापक एकक को परिदत्त किया जाता है। मीटर की निर्गम ग्रैफ्ट मीटर से प्रवाहित द्रव की मात्रा के अनुपात में घूमती है। यांत्रिक पंजिका संयोजन काउंटर टाइप को एक युक्ति है जो वितरित उत्पाद की मात्रा मीटर और मिलीमीटर में लेखबद्ध करती है और यह द्रवचालित खंड के ऊपर चादरी आवेष्टन में लगी हुई है। मीटर के तीन मापन सिलेन्डर हैं। समायोजन नांव से समायोजन किया जाता है। समायोजन को रेंज पांच लीटर पर 50 मि. लि. से 100 मि. ली. तक है। समायोजन के पश्चात् नांव को मोल कर दिया जाता है विभिन्न प्रवाह दरों पर परिदत्त तेल की मात्रा और विभिन्न द्रवों के साथ माडल का परीक्षण किया गया है।

[फा.स. डब्ल्यू.एम. 21(35)/93]

राजीव श्रीवास्तव, मंत्रालय सचिव

MINISTRY OF CIVIL SUPPLIES, CONSUMER AFFAIRS
AND PUBLIC DISTRIBUTION

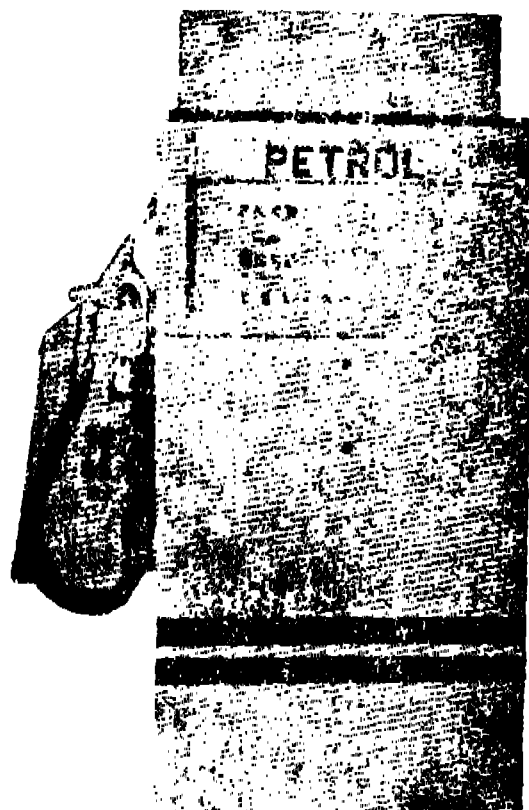
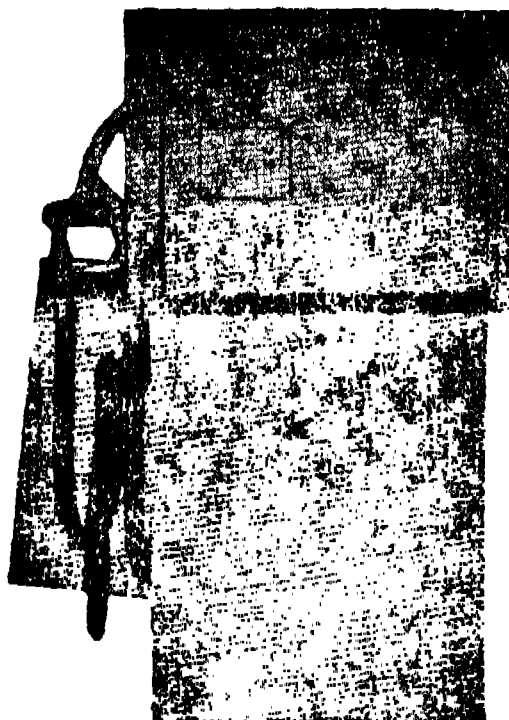
New Delhi, the 12th June, 1995

S.O. 1795.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority is satisfied that the Model described in the said report is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976), and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions:

Now therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of an dispensing pump with mechanical register assembly and of type "MRA" (series 800 and 170) (herein

after referred to as the model) manufactured by M/s. Mercantile and Industrial Development Co. Limited, 39/44,

Scheme 6, Road 2, Sion (F) Bombay-400 022 and which is assigned the approval mark IND/09/94/51.



The Model (see figure) is a dispensing pump with Mechanical register assembly type. The product from underground is sucked through pump to the air separator section of the suction unit. Air free product is delivered to the metering unit through pressure regulating valve. The output shaft of the meter rotates in proportion to the quantity of liquid flowing through the meter. The mechanical register assembly is a counter type device which registers volume of product dispensed in terms of litres and ml and is housed in a sheet enclosure above the hydraulic section. The meter consists of three measuring cylinders. The adjustments is carried out with the adjustment knob. The range of adjustment is from 50 ml to 100 ml over 5 litres. After adjustment, the knob is sealed. The model has been tested for volume of oil delivered at different flow rates and with different liquids.

(File No. WM-21(35)/93)
RAJIV SRIVASTAVA, Jt. Secy.

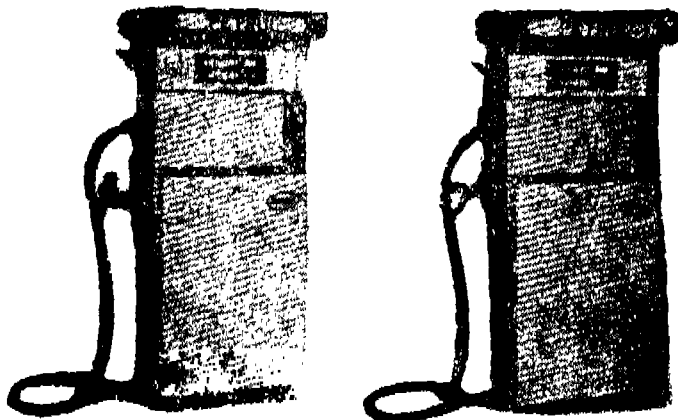
“ई.आर.ए.” (सीरीज 980) और “ई.आर.ए.” (सीरीज 2000) टाइप के इलेक्ट्रॉनिक पंजिका संयोजक वाले योजक पंप के माडल का, (जिसे इसमें इसके पश्चात् माडल कहा गया है) जिसका विनिर्माण मेसर्स मर्केंटाइल एंड इंडस्ट्रियल डेव्लपमेंट कंपनी लि., 39/4, स्कीम 6, रोड 2, सियॉन एम 400002 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई. एन. डी 09/94/52 समनुदणित किया गया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

माडल (आकृति देखिए) इलेक्ट्रॉनिक पंजिका संयोजक टाइप का एक योजक पम्प है, भूमिगत उत्पाद पम्प के

नई दिल्ली, 12 जून, 1995

का.आ. 1796.—केन्द्रीय सरकार की विहित प्राधिकारों द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात् समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि उक्त माडल लगातार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा;

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करने हेतु,



माध्यम से चूषण एकक के वायु पृथक्कारी खंड तक खींचा जाता है। निर्वायु उत्पाद दाब नियंत्रक वाल्व के माध्यम से मापन एकक को परिदत्त किया जाता है। मीटर की निर्गम क्षेपट, मीटर से प्रवाहित द्रव की मात्रा के अनुपात में घूमती है। इलेक्ट्रॉनिक पंजिका संयोजन सूक्ष्म संसाधित आधारित एक ऐसी पंजिका है जो चादरी आवेष्टन में लगी है और पम्प के सबसे ऊपर स्थित है। पंजिका के लिए निवेश एक संवेदक से जिसमें एक प्रकाशीय संवेदक है, लिया जाता है। मापन एकक से धूर्णी निर्गम प्रकाशीय रूप से संवेदित किया जाता है और उसे प्रदर्श एकक द्वारा लीटरों में प्रदर्शित किया जाता है। इलेक्ट्रॉनिक पंजिका संयोजन में एल सीडी/ओर/या ए ई डी दोहरे प्रदर्श हैं दोनों, मात्रालीटर में, प्रतिलीटर दर रूपों में और कुल विक्रय रूपों में दर्शित करते हैं। समायोजन नॉब से समायोजन किया जाता है। समायोजन की रेंज पंज लीटर पर 50 मि.ली. से 100 मि.ली. तक है। समायोजन के पश्चात् नॉब को सील कर दिया जाता है। विभिन्न प्रवाह दरों पर परिदत्त तेल की मात्रा और विभिन्न द्रवों के साथ पम्प का परीक्षण किया गया है।

[फा.सं. डब्ल्यूएम 21(35)/93]

राजीव श्रीवास्तव, संयुक्त सचिव

New Delhi, the 12th June, 1995

S.O. 1796.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority is satisfied that the Model described in the said

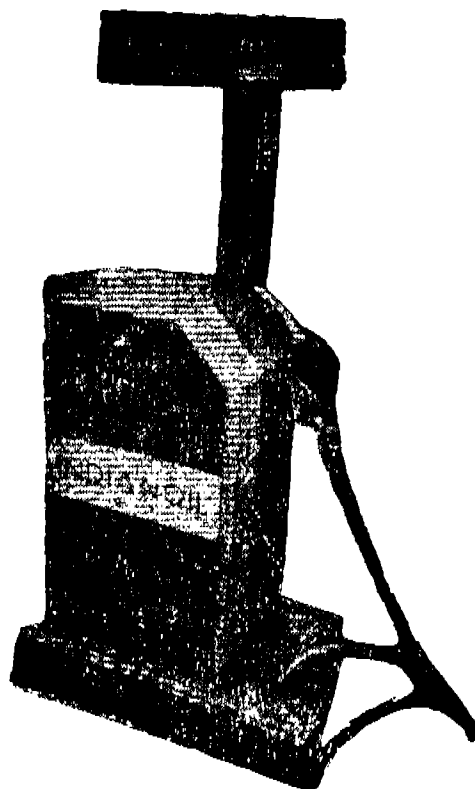
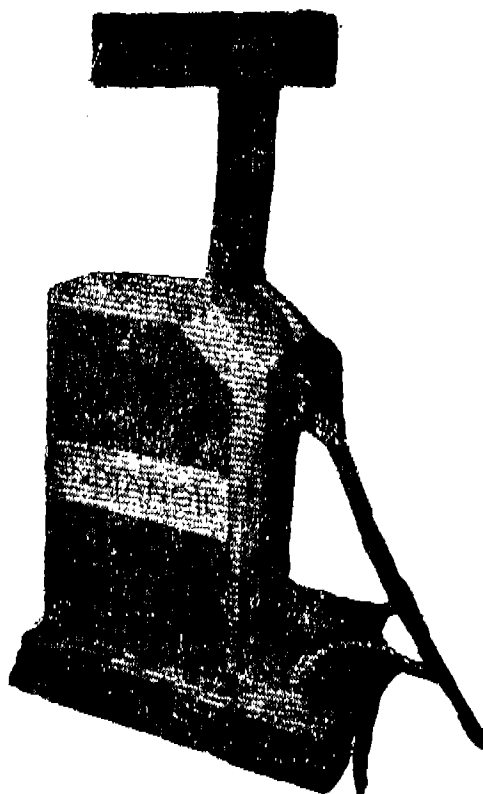
report is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions:

Now therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of an dispensing pump with electronic register assembly and of type "EFA" (series 980 and ERA 2000 series (hereinafter referred to as the model) manufactured by M/s. Mercantile and Industrial Development Co. Limited, 39/44, Scheme 6, Road 2, Sion (E) Bombay-400 022 and which is assigned the approval mark IND/09/94/52.

The Model (see figures) is a dispensing pump with Electronic register assembly type. The product from underground is sucked through pump to the air separator section of the suction unit. Air free product is delivered to the metering unit through pressure regulating valve. The output shaft of the meter rotators in proportion to the quantity of liquid flowing through the meter. The electronic register assembly is a micro-processor based register housed in a sheet enclosure and is located at the top of the pump. The input for the register is taken from a sensor, which contains an optical sensor. The rotary output from the metering unit is optically sensed and is displayed in terms of litres by the displaying unit. The electronic register assembly has dual display, LCD and/or LED, both showing quantity in litres, rate in rupees per litre and total sale in rupees. The adjustments is carried out with the adjustment knob. The range of adjustment is from 50 ml to 100 ml over 5 litres. After adjustment, the knob is sealed. The pump has been tested for volume of oil delivered at different flow rates and with different liquids.

[File No. WM-21(35)/93]

RAJIV SRIVASTAVA, Jt. Secy.

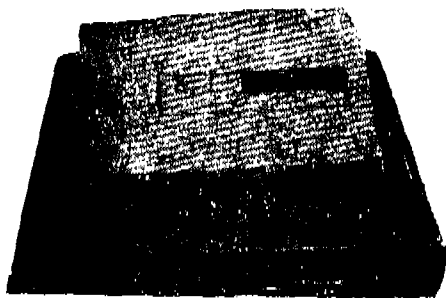


नई दिल्ली, 16 जून, 1995

New Delhi, the 16th June, 1995

का.आ.1797.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात् समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि उक्त माडल लगानार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा;

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, "ओ पी.टी. सीरीज" वर्ग 3 टाइप 50 कि.ग्रा., 100 कि.ग्रा., 150 कि.ग्रा., 200 कि.ग्रा., 250 कि.ग्रा., 300 कि.ग्रा., 350 कि.ग्रा., 400 कि.ग्रा., 450 कि.ग्रा., 500 कि.ग्रा., 1000 कि.ग्रा., 1500 कि.ग्रा. और 2000 कि.ग्रा. की क्षमता वाले (जिसे इसमें इसके पश्चात् माडल कहा गया है) के स्वतः सूचक गैर-स्वचालित प्लेटफार्म तोलन उपकरण के माडल का जिसका विनिर्माण मॅसर्स आण्टार्ट इंडिया (इलेक्ट्रॉनिक्स) अहमदाबाद द्वारा किया गया है और जिसे अनुमोदन चिन्ह आई एन डी 09/94/56 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र प्रकाशित करती है,



(आकृति)

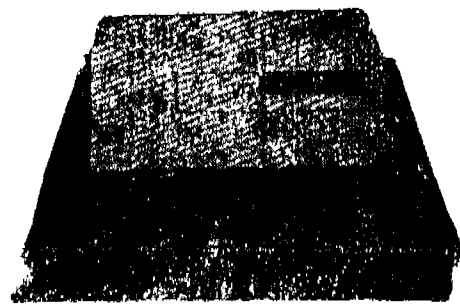
माडल (आकृति देखिए) एक मध्यम यथार्थता (यथार्थता वर्ग 3) का तोलन उपकरण है जिसकी अधिकतम क्षमता 50 किलोग्राम और न्यूनतम क्षमता 200 ग्राम है। सत्यापन मापमान अन्तर (ई.) 10 ग्राम है। इसमें एक टैयर युक्ति है जिसका व्यकलनात्मक प्रतिधारण टैयर प्रभाव 100 प्रतिशत है। आधार और प्लेटफार्म धातु के बने हुए हैं (भारग्राही) वर्गाकार आकृति का है जिसका पार्श्व 400 × 400 मि.मी. है। संप्रतीक प्रकाश उत्सर्जन डायोड संप्रदर्श तोल परिणाम उपदर्शित करता है। यह उपकरण 230 वोल्ट, 50 हर्ट्ज के प्रत्यावर्ती धारा विद्युत प्रदाय पर प्रचालित होता है।

[फा.सं. डब्ल्यू.एम. 21(37)/94]

राजीव श्रीवास्तव, संयुक्त सचिव

S.O. 1797.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) and (8) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of Model of self-indicating non-automatic Platform weighing instrument of type OPT series class III (hereinafter referred to as the Model) manufactured by M/s. Optart India (Electronics), Ahmedabad with the capacity of 50 kg., 100 kg., 150 kg., 200 kg., 250 kg., 300 kg., 350 kg., 400 kg., 450 kg., 500 kg., 1000 kg., 1500 kg., and 2000 kg., which is assigned the approval mark IND/09/94/56;



(Figure)

The Model (see figure) is a Medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 50 kg., and minimum capacity of 200 gram. The verification scale interval (e) is 10 gram. It has a tare device with a 100 per cent subtractive retained tare effect. The base and the platform are metallic. The load receptor is of square shape of sides 400 × 400 millimetre. The LED display of character indicates the weighing result. The instrument operates on 230 volts, 50 hertz alternate current power supply.

[P. No. WM-21(37)/94]
RAJIV SRIVASTAVA, Jt. Secy.

नई दिल्ली, 16 जून, 1995

का.आ.1798.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात् समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि उक्त माडल लगानार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा;

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, "ओ पी.टी. सीरीज" वर्ग-3 टाइप 500 ग्राम, 1 कि.ग्राम, 2 कि.ग्राम, 5 कि.ग्राम, 10 कि.ग्राम, 20 कि.ग्राम, 30 कि.ग्राम और 50 कि.ग्राम की क्षमता वाले (जिसे इसमें इसके पश्चात् माडल कहा गया है) के स्वतः सूचक गैर-

स्वचालित मंज तल वाले तौलन उपकरण के माडल का जिसका विनिर्माण मैसर्स आर्टा इंडिया (इलेक्ट्रॉनिक्स) अहमदाबाद द्वारा किया गया है और जिसे अनुमोदन चिन्ह आई.एन.डी. 09/94/57 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र प्रकाशित करती है;



(आकृति)

माडल (आकृति देखिए) एक मध्यम यथार्थता (यथार्थता वर्ग 3) का तौलन उपकरण है जिसकी अधिकतम क्षमता 10 किलोग्राम और न्यूनतम क्षमता 40 ग्राम है। मत्यान मापमान अन्तर (ई) 2 ग्राम है। इसमें एक डेयर युक्ति है जिसका व्यकलनात्मक प्रतिधारण डेयर प्रभाव 100 प्रतिशत है। आधार और प्लेटफार्म धातु के बने हुए हैं। भारग्राही बर्गीकार आकृति का है जिसके पार्श्व 200×200 मि.मी. हैं। संप्रतीक प्रकाश उत्सर्जन डायोड संप्रदर्श तौल परिणाम उपर्शित करता है। यह उपकरण 230 वोल्ट, 50 हर्टज के प्रत्यावर्ती धारा विद्युत प्रदाय पर प्रचालित होता है।

[फा.सं. डब्ल्यू एम 21(37)/94]

राजीव श्रीवास्तव, संयुक्त सचिव

New Delhi, the 16th June, 1995

S.O. 1798.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) and (8) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of Model of self-indicating non-automatic table top weighing instrument of type OPT series class III (hereinafter referred to as the Model) manufactured by M/s. Optart India (Electronics), Ahmedabad with the capacity of 500 gram, 1 kg.,

2 kg., 5 kg., 10 kg., 20 kg., 30 kg., and 50 kg., which is assigned the approval mark IND/09/94/57



(Figure)

The Model (see figure) is a Medium accuracy (accuracy class III) weighing instrument with a maximum capacity of 10 kg and minimum capacity of 40 gram. The verification scale interval (e) is 2 gram. It has a tare device with a 100 per cent subtractive retained tare effect. The base and the platform are metallic. The load receptor is of square shape of sides 200×200 millimetre. The LFD display of character indicates the weighing result. The instrument operates on 230 volt's 50 hertz alternate current power supply.

[F. No. WM-21(37)/94]

RAJIV SRIVASTAVA, Jt. Secy.

नई दिल्ली, 21 जून, 1995

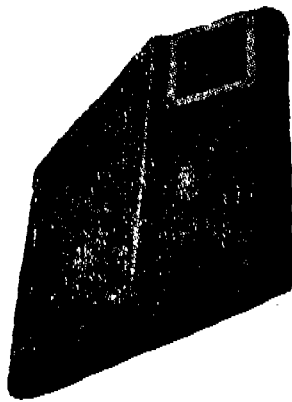
का.अ. 1799.—केंद्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात्, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल खाद और माप मानक अधिनियम, 1976 (1976 का 60) और खाद और माप मानक (माडल का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि वह लगातार प्रयोग की शक्ति में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा करता रहेगा;

अतः केंद्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, "ऑप्टा" ब्रांड नाम वाले खाद के स्वतः सूचक सैर-स्वचालित तौलन उपकरण के माडल को (जिसे इसमें इसके पश्चात् माडल कहा गया है) जिसका विनिर्माण मैसर्स प्रेक्टिकल इलेक्ट्रॉनिक्स कार्पोरेशन, अहमदाबाद लि. के सामने आनंद द्वारा किया गया है और जिसे अनुमोदन चिन्ह आई.एन.डी. 09/94/57 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है।

आगे, केंद्रीय सरकार, उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उक्त विनिर्माण द्वारा उक्त विनिर्माण के अनुसार और उक्त सामग्री, जिसे आनंद द्वारा माडल का विनिर्माण किया गया है विनिर्मित 1 किलोग्राम, 2 किलोग्राम, 5 किलोग्राम

10 किलोग्राम, 25 किलोग्राम और 50 किलोग्राम की मात्राओं में बनाए गए समान मॉडल, यथार्थता और उर्वी शिफ्ट के कार्यकरण वाले तोलन उपकरण भी हैं।

2 kilogram, 5 kilogram, 10 kilogram, 25 kilogram and 50 kilogram manufactured by the same manufacturer in accordance with the same principle and with the same materials with which, the approved Model has been manufactured.



आकृति

माडल (आकृति देखिए) एक अधिकतम यथार्थता (यथार्थता वर्ग 3) का तोलन उपकरण है जिसकी अधिकतम क्षमता 15 किलोग्राम और न्यूनतम क्षमता 100 ग्राम है। जड़तापन मापन शिफ्ट (ई.) 5 ग्राम है। इसमें एक डेयर यंत्रित है जिसका स्वतंत्रात्मक प्रतिघातन डेयर प्रभाव 100 प्रतिशत है। आन्तरिक घटक, प्लैटिनियम और स्टेनलेस स्टील का बना हुआ है। माडल का आधार आकृति का है जिसका व्यास 300 मि.मी. है।

यह प्रकाश उत्सर्जन शिफ्ट के माध्यम से सतत तौर पर मापन उपरक्षित करता है। यह उपकरण 230 वाट, 50 हर्ट्ज के प्रदायकों द्वारा बिजली प्रदाय पर प्रचालित होता है।

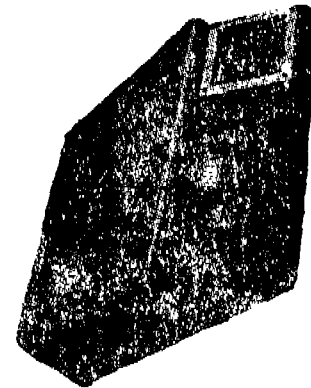
[फा.सं. डब्ल्यू एम-21 (33)/92]
राजीव श्रीवास्तव, सयुक्त सचिव

New Delhi, the 21st June, 1995

S.O. 1799.—Whereas the Central Government, after considering the import submitted to it by the prescribed authority, is satisfied that the Model described in the said report is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions :

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of the self-indicating, non-automatic weighing instrument with brand name "Jumby" (hereinafter referred to as the Model) manufactured by M/s. Practical Electronics Corporation, Opp. Vallabh Glass-Works, Anand and which is assigned the approval mark IND/09/94/42;

Further, in exercise of the powers conferred by sub-section (12) of the said section, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 1 kilogram,



(Figure)

The Model (see figure 42) is a maximum accuracy (accuracy class III) weighing instrument with a maximum capacity of 15 kilogram and minimum capacity of 100 gram. The verification scale interval (e) is 5 gram. It has a tare device with a 100 per cent subtractive retained tare effect. The base and the load receptor are made up of aluminium and stainless steel respectively. The square load receptor is of size 300 millimetre. The display of through LED indicates the weighing result. The instrument operates on 230 volts, 50 hertz alternate current power supply.

[F. No. WM-21(33)92]

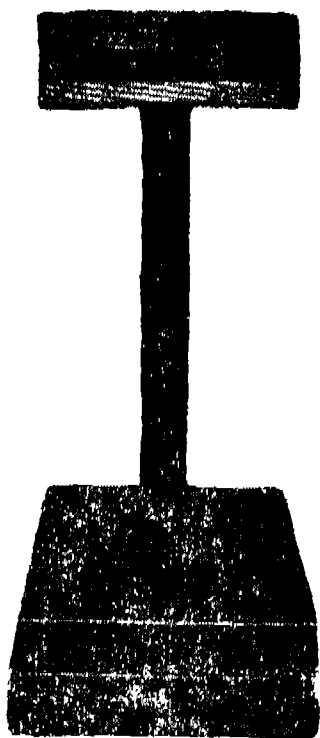
RAJIV SRIVASTAVA, Jt. Secy.

नई दिल्ली, 21 जून, 1995

का.आ. 1800.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल, बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (मॉडल का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि उक्त मॉडल लगानार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा देता रहेगा;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, "जम्बी" ब्रांड नाम वाले स्वतः सूचक गैर-स्वचालित प्लेटफॉर्म तोलन उपकरण के मॉडल का (जिसके इसमें इसके पश्चात मॉडल कहा गया है) जिगका विनिर्माण मैसर्स प्रैक्टिकल इलेक्ट्रॉनिक्स कॉर्पोरेशन, वल्लभ ग्लास वर्क्स लिमिटेड के सामने, आनंद द्वारा किया गया है और जिसे अनुमोदन चिह्न आई.एन.डी. 09/94/75 सम्बन्धित किया गया है, अनुमोदन प्रमाण पत्र प्रकाशित करती है;

आगे, केन्द्रीय सरकार, उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाणपत्र के अन्तर्गत उसी विनिर्माता द्वारा उक्त पिछात के अनुरूप और उसी सामग्री से, जिससे अनुमोदित माडल का विनिर्माण किया गया है विनिर्मित 60 किलोग्राम, 100 किलोग्राम, 200 किलोग्राम, 300 किलोग्राम, 500 किलोग्राम, 1000 किलोग्राम और 2000 किलोग्राम की अधिकतम क्षमता वाले समस्त मॉक, यथार्थता और उसी सीरीज के कार्यकरण वाले तोलन उपकरण भी हैं।



आकृति

माडल (आकृति देखिए) एक मध्यम यथार्थता (यथार्थता वर्ग 3) का प्लेटफार्म तोलन उपकरण है जिसकी अधिकतम क्षमता 60 किलोग्राम और न्यूनतम क्षमता 200 ग्राम है। सत्यापन मापमान अन्तर (ई) 10 ग्राम है। इसमें एक टैर युक्ति है जिसका व्यकलनात्मक प्रतिधारण टैर प्रभाव 100 प्रतिशत है। आधार और भारग्राही क्रमशः एल्युमीनियम और मुदु हस्पात के बने हैं। भारग्राही वर्गाकार आकृति का है जिसका आकार 400 मि.मी. है। प्रकाश उत्सर्जन डायोड के माध्यम से संप्रदर्श तोल परिणाम उपदर्शित करता है। यह उपकरण 230 वोल्ट, 50 हर्टज के प्रत्यावर्ती धारा विद्युत प्रवाय पर प्रचालित होता है।

[फा. सं. डब्ल्यू एम-21 (33)/92]

राजीव श्रीवास्तव, संयुक्त सचिव

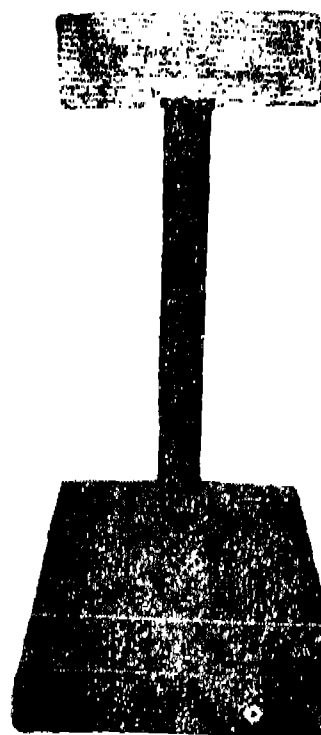
New Delhi, the 21st June, 1995

S.O. 1800.—Whereas the Central Government, after considering the import submitted to it by the prescribed authority, is satisfied that the Model described in the said report is in conformity with the provisions of the Standards of Weights and Measures

Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions :

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of the self-indicating, non-automatic platform weighing instrument with brand name "Jumby" (hereinafter referred to as the Model) manufactured by M/s. Practical Electronics Corporation, Opp. Vallabh glass works, Anand and which is assigned the approval mark IND/09/94/75;

Further, in exercise of the powers conferred by sub-section (12) of the said section, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 60 kilogram, 100 kilogram, 200 kilogram, 300 kilogram, 500 kilogram, 1000 kilogram and 2000 kilogram manufactured by the same manufacturer in accordance with the same principle and with the same materials with which, the approved Model has been manufactured.



(Figure)

The Model (see figure) is a medium accuracy (accuracy class III) platform weighing instrument with a maximum capacity of 60 kilogram and minimum capacity of 200 gram. The verification scale interval (e) is 10 gram. It has a tare device with a 100 per cent subtractive retained tare effect. The base and the load receptor are made up of aluminium and stainless steel respectively. The square load receptor is of size 400 millimetre. The display of through LED

indicates the weighing result. The instrument operates on 230 volts, 50 hertz alternate current power supply.

[F. No. WM-21(33)92]

RAJIV SRIVASTAVA, Jt. Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 14 जून, 1995

का.आ. 1801.—भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खंड (ख) के अनुसरण में, डा. प्रकाश एम. शाह को महाराजा सायाजीराव विश्वविद्यालय, बड़ोदा की सीनेट द्वारा 28 मार्च 1995 को डा. (कुमारी) जयश्री पी. मेहता के स्थान पर 24 फरवरी, 1996 तक की शेष अवधि के लिए भारतीय आयुर्विज्ञान परिषद का सदस्य निर्वाचित किया गया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 3 की उपधारा (1) के अनुसरण में, भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की अधिसूचना सं. का.आ. 138, तारीख 9 फरवरी, 1960 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, "धारा 3 की उपधारा (1) के खंड (ख) के अधीन निर्वाचित" शीर्षक के नीचे, क्रम सं. 24 और उससे संबंधित प्रविष्टियों के स्थान पर, निम्नलिखित क्रम सं. और प्रविष्टियाँ रखी जाएंगी, अर्थात् :—

"24. डा. प्रकाश एम. शाह, एम.एस. विश्व-चन्दन अस्पताल, विद्यालय, बड़ोदा"।
नवरंग टाकीज कंपाउन्ड,
रावपुरा बडोदरा,
गुजरात।

[सं. फा.वी. 11013/11/95-एम.ई. (यूजी)]
एम.के. मिश्र, डेस्क अधिकारी

पाद टिप्पण :—मूल अधिसूचना का.आ. 138, तारीख 9 फरवरी, 1960 द्वारा प्रकाशित की गई थी।

MINISTRY OF HEALTH AND FAMILY
WELFARE

(Department of Health)

New Delhi, the 14th June, 1995

S.O. 1801.—Whereas in pursuance of clause (b) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956), Dr. Prakash M. Shah has been selected on the 28th March, 1995 by the Senate of the Maharaja Sayaji Rao University of Baroda to be the member of the Medical Council of India in place of Dr. (Miss) Jayashree P. Mehta for the remaining period upto the 24th February, 1996

1436 GL 95—3.

Now, therefore, in pursuance of Sub-Section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendments in the notification of the Government of India in the then Ministry of Health, No. S.O. 138 dated the 9th January, 1960, namely :—

In the said notification, under the heading "Elected under clause (b) of sub-section (1) of section 3", for serial number 24 and the entries relating thereto, the following serial number and entries shall be substituted, namely :—

"24. Dr. Prakash M. Shah, M.S. University of Chandan Hospital, Baroda"
Navrang Talkies Compound,
Raopura Badodara,
Gujarat.

[No. V-11013/11/95-ME(UG)]

S. K. MISHRA, Desk Officer.

Foot Note :—

The principal notification was published vide S.O. No. 138 dated 9-1-1960.

नई दिल्ली, 16 जून, 1995

का.आ. 1802.—भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खंड (ख) के अनुसरण में डा. जी. सम्बाशिवराव को गुलबर्गा विश्वविद्यालय की सीनेट द्वारा 24 सितम्बर 1994 को डा. बी.सी. बिलगुन्डी के स्थान पर 17 जुलाई 1999 तक की शेष अवधि के लिए भारतीय आयुर्विज्ञान परिषद का सदस्य निर्वाचित किया गया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 3 की उपधारा (1) के अनुसरण में, भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की अधिसूचना सं. का.आ. 138, तारीख 9 जनवरी, 1960 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में, "धारा 3 की उपधारा (1) के खंड (ख) के अधीन निर्वाचित" शीर्षक के नीचे, क्रम सं. 66 और उससे संबंधित प्रविष्टि के स्थान पर, निम्नलिखित क्रम सं. और प्रविष्टि रखी जाएंगी, अर्थात् :—

"66. डा. जी. सम्बाशिवराव, गुलबर्गा विश्वविद्यालय"
शल्य चिकित्सा प्राचार्य,
शल्य चिकित्सा विभाग,
एम आर मेडिकल कालेज,
गुलबर्गा-585 105, कर्नाटक

[सं. वी 11013/5/94-एम ई (यू जी)]

एम.के. मिश्र, डेस्क अधिकारी

पाद टिप्पण :—मूल अधिसूचना का.आ. 138, तारीख 9 जनवरी, 1960 द्वारा प्रकाशित की गई थी।

New Delhi, the 16th June, 1995

S.O. 1802.—Whereas in pursuance of clause (b) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956), Dr. G. Sambashiva Rao has been elected on the 24th September, 1994 by the Senate of the University of Gulbarga to be a member of the Medical Council of India in place of Dr. B. C. Bilgundi for the remaining period upto the 17th July, 1999;

Now, therefore, in pursuance of Sub-Section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendments in the notification of the Government of India in the then Ministry of Health, No. S.O. 138 dated the 9th January, 1960, namely :—

In the said notification, under the heading "Elected under clause (b) of sub-section (1) of section 3", for serial number 66 and the entry relating thereto, the following serial number and entry shall be substituted, namely :—

"66. Dr. G. Sambashiva Rao, Gulbarga University, Professor of Surgery, Department of Surgery, M.R. Medical College, Gulbarga-585 105, Karnataka

[No. V-11013/5/94-ME(UG)]

S. K. MISHRA, Desk Officer.

शहरी कार्य और रोजगार मंत्रालय

(दिल्ली प्रभाग)

नई दिल्ली, 16 जून, 1995

का.आ. 1803—यतः कतिपय संशोधन, जिन्हें केन्द्रीय सरकार दिल्ली बृहद योजना की विकास संहिता और विकास संहिता की अनुसूची में प्रस्तावित करती है तथा जो दिल्ली विकास अधिनियम, 1957 (1957 का 61) की धारा 44 के प्रावधानों के अनुसार दिनांक 25-2-94 के नोटिस संख्या एफ-20(4)83-एम पी द्वारा प्रकाशित किये गये थे जिसमें उक्त अधिनियम की धारा 11-क की उपधारा 3 में अपेक्षित आपत्तियाँ/सुझाव, उक्त नोटिस की तारीख के 30 दिन की अवधि में आमंत्रित किए गए थे।

यतः प्रस्तावित संशोधनों के बारे में 14 आपत्तियाँ/सुझाव जनता से प्राप्त हुए हैं।

और यतः केन्द्रीय सरकार ने मामले पर ध्यानपूर्वक विचार करने के पश्चात् दिल्ली बृहद योजना में संशोधन करने का निर्णय किया है।

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11-क की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राजपत्र में इस अधिसूचना के प्रकाशन

की तारीख से दिल्ली की उक्त बृहद योजना में एतद्वारा निम्नलिखित संशोधन करती है।

संशोधन :

- (1) भारत के राजपत्र, असाधारण भाग-II, खंड 3, उपखंड (ii) दिनांक 1-8-90 के पृष्ठ 163 बाईं ओर के कालम पर (बो) (ii) के अंत में "ए-3 ग्रामीण जोन (ए-2 सहित)" के अन्तर्गत निम्नलिखित को जोड़ा जाता है :—

"मोटल उसके संबंध में बनाए गए विनियमों के अनुसार ग्रामीण जोन/हरित पट्टी और राष्ट्रीय राजमार्गों और 20 मीटर (मार्गाधिकार) न्यूनतम चौड़ाई वाले अंतर्राष्ट्रीय मार्गों (एक सड़क के लिए परिभाषित जो राष्ट्रीय राजधानी क्षेत्र को पड़ोसी राज्य के साथ जोड़े) पर वाणिज्यिक जोनों में अथवा उसके समानान्तर चलने वाले सेवा मार्गों में अनुमत है।"

- (2) भारत के राजपत्र, असाधारण भाग II, खंड 3, उपखंड (ii) दिनांक 1-8-90 के पृष्ठ 165 (बाईं ओर के कालम) पर "0.33 (मोटल)" शीर्षक के अन्तर्गत परिभाषा को निम्नानुसार प्रतिस्थापित किया जाता है :—

"विशेष रूप से सड़क यात्रियों के आनंद, ठहरने, विश्राम और मनोरंजन तथा संबंधित कार्यालयों को पूरा करने के लिए तैयार एवं प्रचालित परिसर।"

[सं. के-13011/25/93-डी डी-1 बी]

आर. विश्वनाथन, अवसर सचिव

MINISTRY OF URBAN AFFAIRS & EMPLOYMENT
(Delhi Division)

New Delhi, the 16th June, 1995

S.O. 1803.—Whereas certain modifications, which the Central Government proposed to make in the Development Code and Schedule to the Development Code of the Master Plan for Delhi, were published in Notice No. F. 20(4) 88-MP dated 25-2-1994 for inviting objections/suggestions from the public in accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957), as required by Sub-Section 3 of Section 11-A of the said Act, within a period of 30 days from the date of the said Notice:

Whereas 14 objections/suggestions were received from the public with regard to the said proposed modifications:

And whereas the Central Government, after careful consideration of the matter, have decided to modify the Master Plan for Delhi:

Now, therefore, in exercise of the powers conferred by Sub-Section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modifications in the said Master Plan for Delhi with effect from the date of publication of this Notification in the Gazette of India.

MODIFICATION :

On page 155 (left hand column) of the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii) dated 1st August, 1990 under heading 'A-3 Rural Zone (including A-2) at the end of (b)(ii), the following is added:

"Motel is permitted as per Regulations made on that behalf in the Rural Zone/Green Belt and in Com-

mercial Zones on National Highways and Inter-State roads (defined to mean a road which directly connects the National Capital Territory with a neighbouring State) of a minimum width (right-of-way) of 20 metres or service roads running parallel to them."

2. On page 171 (left hand column) of the Gazette of India, Extraordinary Part II, Section-3, Sub-Section (ii) dated 1-8-1990 under the heading '033 (Motels)', the definition is replaced as under :

"A premises designed and operated especially to cater to the boarding, lodging, rest and recreation and related activities of travellers by road."

[No. K-13011/25/93-DDIB]
R. VISHWANATHAN, Under Secy.

नागर विमानन और पर्यटन मंत्रालय

(नागर विमानन विभाग)

नई दिल्ली, 15 जून, 1995

का.आ. 1804.—अंतर्राष्ट्रीय विमानपत्तन प्राधिकरण अधिनियम, 1971 (1971 का 43) की धारा 3 की उप धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्द्वारा श्री ए.एम. भारद्वाज, संयुक्त सचिव, नागर विमानन और पर्यटन मंत्रालय (नागर विमानन विभाग) को दिनांक 24-02-95 से तीन वर्ष की अवधि के लिए अथवा भारतीय विमानपत्तन प्राधिकरण बनने तक अथवा वर्तमान पद छोड़ने तक, इनमें से जो भी पहले हो, भारत अंतर्राष्ट्रीय विमानपत्तन प्राधिकरण के बोर्ड के अंशकालिक सदस्य के रूप में नियुक्त करती है।

[संख्या ए. वी. 24022/1/91-बी.ई.]
हरबंस सिंह सन्धु, अवर सचिव

MINISTRY OF CIVIL AVIATION AND TOURISM

(Department of Civil Aviation)

New Delhi, the 15th June, 1995

S.O. 1804.—In exercise of the powers conferred by Sub-section 3 of Section 3 of the International Airports Authority Act, 1971 (43 of 1971), the Central Government hereby appoints Shri A. M. Bhardwaj, Joint Secretary, Ministry of Civil Aviation and Tourism (Department of Civil Aviation) as a part-time Member on the Board of the International Airports Authority of India with effect from 24-2-1995 for a period of three years or till the formation of Airports Authority of India or till he demits the present office, whichever is earlier.

[No. AV. 24022/1/91-VE]
H. S. SANDHU, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 27 मार्च, 1995

का.आ. 1805.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंधित नियोजकों और उनके

कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-3-95 को प्राप्त हुआ था।

[संख्या एल-12012/19/86/डी II ए/आई आर (बी-II)]

ब्रज मोहन, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 27th March, 1995

S.O. 1805.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 24-3-95.

[No. L-12012/19/86/D-II-A/IR(B-II)]
BRAJ MOHAN, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 18/88

रेफरेंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-12012/19/86-डी.-1 (ए) दि. 1-5-87

राजस्थान बैंक एम्प्लॉईज यूनियन, परवाना भवन, माधो बाग, जोधपुर।

—प्रार्थी

बनाम

औद्योगिक प्रबंधक, पंजाब नेशनल बैंक, ए-36 शास्त्री नगर, जोधपुर।

—प्रतिप्रार्थी

उपस्थित

प्रार्थी की ओर से : श्री जे.एल. शाह
प्रतिप्रार्थी की ओर से : श्री मानसिंह गुप्ता
दिनांक अर्वाद : 21-10-1994

अर्वाद

प्रबंधक, पंजाब नेशनल बैंक, जोधपुर व उनके अधिकारी, जिनके के मध्य निम्न विवाद केन्द्रीय सरकार द्वारा अधिनियम हेतु इस न्यायाधिकरण में प्रेषित किया गया है:

"क्या पंजाब नेशनल बैंक, जोधपुर के प्रबंधन की ओर से श्री टी.आर. जिंगर पर तीन वार्षिक वेतन वृद्धियां स्थाई रूप से रोकने की कार्यवाही न्यायोचित है? यदि नहीं तो संबंधित कर्मकार किस अनुवोध का हकदार है"

2. श्रमिक की ओर से संबंधित श्रमिक यूनियन के महासचिव द्वारा विवाद के संबंध में क्लेम प्रस्तुत किया गया है जिसमें

यह अभिलिखित किया गया है कि श्री जिपर के खिलाफ पांच आरोपों के सबंध में जो विभागीय जांच प्रबन्धक द्वारा करवाई गई थी वह जांच बैंक के नियमानुसार व नैसर्गिक न्याय के सिद्धान्तों के अनुरूप नहीं की गई, जांच अधिकारी द्वारा जिन आरोपों को प्रमाणित माना गया है उसके लिए कोई भी विधिक साध्य उपलब्ध नहीं थी इसलिए जांच अधिकारी का विनिश्चय अनुचित है तथा अनुशासनिक अधिकारी व अपील अधिकारी द्वारा जो आदेश दण्ड के संबंध में पारित किया गया है वह सकारण नहीं होने में अपास्त किये जाने योग्य है। श्रमिक के खिलाफ जांच जांच अधिकारी द्वारा तीन आरोप प्रमाणित माने गये थे व बाकी आरोपों में पर्याप्त साध्य नहीं होने से उन्हें साबित नहीं माना गया। अनुशासनिक अधिकारी द्वारा इन आरोपों के संबंध में तीन बतन वृद्धि स्थाई रूप में रोकने का दण्ड-देश श्रमिक के विरुद्ध पारित किया गया था व अपील में भी इस आदेश की पुष्टि की गई है।

3. नियोजक की ओर से जो क्लेम का जवाब प्रस्तुत किया गया है उसमें प्रारंभिक आपत्ति यह ली गई है कि केन्द्र सरकार द्वारा विवाद को विधिवत निर्देशित नहीं किया गया है इसलिए विवाद सुनवाई योग्य नहीं है। इसके अतिरिक्त गुण दोष पर यह जवाब दिया गया कि जो जांच श्रमिक के खिलाफ सम्पन्न हुई थी वह बैंक के स्थाई आदेशों व नियमों के अनुसार हुई थी व जांच अधिकारी ने जिन आरोपों के संबंध में प्रमाणित होने का विनिश्चय किया है वह साध्य आधारित है इसलिए उनमें किसी प्रकार के हस्तक्षेप की न्यायोचितता नहीं है। यह भी नियोजक की ओर से लिखा गया है कि आरोप की गंभीरता को देखते हुए जो दण्डादेश श्रमिक के विरुद्ध पारित किया गया है वह किसी भी प्रकार अत्यधिक या कठोर नहीं है। नियोजक द्वारा विभागीय जांच का सम्पूर्ण अभिलेख न्यायाधिकरण के समक्ष प्रस्तुत किया गया है। बहस दोनों पक्षों की सुनी गई।

4. जो प्रारंभिक व वैधानिक आपत्ति नियोजक की ओर से जवाब में ली गई है उसे किसी भी प्रक्रम पर प्रेरित नहीं किया गया है व इसके अलावा बहस में यह भी नहीं बताया गया है कि किस प्रकार केन्द्र सरकार द्वारा निर्देशित विवाद सुनवाई योग्य नहीं है। विवाद के पठन से यह स्पष्ट है कि संबंधित यूनियन द्वारा श्रमिक का विवाद उठाया गया था व उसी के द्वारा क्लेम प्रस्तुत किया गया है इसलिए भी विवाद निश्चित रूप से सुनवाई योग्य है। तथ्यों व परिस्थितियों को देखते हुए नियोजक की ओर से ली गई इस आपत्ति को अस्वीकार किया जाता है।

5. 21-7-88 की आदेशिका में यह उल्लेख किया हुआ है कि श्रमिक के विद्वान प्रतिनिधि श्री शाह ने घरेलू जांच को उचित व सही होना स्वीकार किया व इस कारण जांच के संबंध में जो भी आपत्तियां श्रमिक की ओर से ली गई हैं वे अब सुनवाई योग्य नहीं रहती व श्रमिक की ओर से

की गई इस स्वीकृति के पश्चात दोनों पक्षों की बहस दण्ड की प्रकृति व जांच अधिकारी के विनिश्चय के संबंध में प्रेष रहती है।

6. श्रमिक के विद्वान प्रतिनिधि ने अपनी बहस में यह बताया कि जिन तीन आरोपों को जांच अधिकारी ने साबित माना है उस संबंध में उनका विनिश्चय उचित नहीं है क्योंकि किसी भी आरोप को साबित मानने के लिए जांच अधिकारी के समक्ष वैधानिक व पर्याप्त साध्य उपलब्ध नहीं थी। दूसरी ओर नियोजक के विद्वान प्रतिनिधि ने उपलब्ध साध्य का व सुसंगत परिस्थितियों का विवरण देते हुए यह तर्क दिया है कि जांच अधिकारी द्वारा तीनों ही आरोपों में दिये गये विनिश्चय उचित व सही हैं इसलिए विवाद में कोई भी अनुतोष श्रमिक प्राप्त करने का अधिकारी नहीं है। तीनों आरोप के संबंध में उपलब्ध साध्य व परिस्थितियों पर विचार किया जाकर यह विनिश्चय किया जाना है कि क्या जांच अधिकारी को राय उचित है या नहीं?

7. प्रथम आरोप जिसको जांच अधिकारी द्वारा साबित माना गया है वह यह है कि श्रमिक द्वारा दिनांक 26-3-83, 1-8-83 व 25-8-83 को श्री पूसा राम चौधरी के हस्ताक्षर विधुदाल स्लिप पर फर्जी बनाकर क्रमशः 1500, 500 व 1000/- रुपये बैंक से पूसा राम के खाते से निकाले गये। इस संबंध में जांच अधिकारी के समक्ष जो कुल साध्य प्रस्तुत हुई है उसमें गवाह श्री पूसा राम स्वयं हैं जो श्रमिक का सगा भाई है। इस गवाह ने किसी भी रूप में आरोप में उल्लिखित तथ्यों की पुष्टि नहीं की है व यह कहा कि वह बैंक में मैनेजर के बुलाने पर गया था व उन्होंने विधुदाल स्लिप पर उसके हस्ताक्षर की पुष्टि करना चाही था व उस समय उसने हस्ताक्षर अपने होना बताया था। यह गवाह शिकायत में जिन परिस्थितियों में विमुख हुआ है वह एक स्वाभाविक प्रक्रिया है क्योंकि यह गवाह श्रमिक का सगा भाई है। इसके अलावा बैंक के अधिकारी श्री एस.सी.एस. राँव प्रस्तुत हुए हैं जिन्होंने यह कहा है कि श्री पूसा राम ने उनके समक्ष यह मौखिक शिकायत की थी कि तीनों संबंधित विधुदाल स्लिप्स पर उसके हस्ताक्षर नहीं हैं किन्तु यह भी प्रकट किया कि वह अपने भाई को बचाना चाहता है व इसी कारण उसने इस बात की पुष्टि की कि उक्त विधुदाल स्लिप्स पर उसके हस्ताक्षर किये हुए हैं। इसके अलावा बैंक के वे कर्मचारी प्रस्तुत हुए हैं जिन्होंने तीनों विधुदाल स्लिप्स के जरिये श्रमिक को रकम का भुगतान किया था व उनका कथन यह है कि तीनों ही विधुदाल स्लिप्स पर गारंटी के रूप में श्रमिक ने हस्ताक्षर किये थे व उनका यह भी कथन है कि विधुदाल स्लिप्स की पृष्ठ पर हस्ताक्षरों में कुछ अंतर भी उन्हें प्रकट हुआ था परन्तु श्रमिक बैंक का कर्मचारी होने के कारण व उसके द्वारा विधुदाल स्लिप्स की पृष्ठ पर हस्ताक्षर करने के कारण उन्हें भुगतान किया गया था व गवाहन श्रीमति सीता, श्री पूरणमल मीणा व जे.के. जैन हैं। इसके अलावा एक सहस्रपूर्ण गवाह श्री रमेश कुमार ठाकुर हस्तनिधि विशेषज्ञ

को बैंक ने जांच अधिकारी के समक्ष प्रस्तुत किया है जिन्होंने अपनी रिपोर्ट को साबित करने हुए यह बताया है कि श्रमिक की नमूने की लिखावट जो उसकी सेवा पुस्तिका में उपलब्ध थी उसमें विवेचित विथडाल स्लिप के हस्ताक्षरों का मन्थन किया गया था व इस संबंध में उनकी यह राय है कि तीनों विथडाल स्लिप पर श्रमिक द्वारा हस्ताक्षर किये हुए हैं। गवाह के पूरे बयान के पठन से कोई भी ऐसा आधार उपलब्ध नहीं होता कि उन्होंने जो साक्ष्य दी है वह सही नहीं है। उक्त साक्ष्य के आधार पर जांच अधिकारी ने यह साबित माना है कि तीनों ही विथडाल स्लिप पर पूसाराम के फर्जी हस्ताक्षर बनाकर श्रमिक के द्वारा रकम का प्रत्याहन बैंक से किया गया था। श्रमिक के विद्वान प्रतिनिधि का कथन है कि कोई भी प्रत्यक्ष साक्ष्य फर्जी हस्ताक्षरों की उपलब्ध नहीं होने से व विशेषज्ञ की राय इस संबंध में निर्णायक नहीं होने से जांच अधिकारी का विनिश्चय मान्य नहीं हो सकता। विधि दृष्टान्त इस संबंध में कोई भी उनकी ओर से प्रस्तुत नहीं किया गया है। उसके विपरीत नियोजक के प्रतिनिधि ने यह तर्क दिया है कि साक्ष्य अधिनियम के तकनीकी प्रावधान घरेलू जांच के मामलों में लागू नहीं होते हैं व न ही साक्ष्य अधिनियम के तहत किसी तथ्य को प्रमाणित करने का जो मापदण्ड है वह भी इस प्रकार के मामलों में लागू नहीं होता है। उनका यह भी कथन है कि दण्डिक व सिविल न्यायालयों में किसी भी तथ्य या आरोप को प्रमाणित मानने के लिए साक्ष्य का जो स्तर बांछित है इस प्रकार की स्थिति घरेलू जांच में आवश्यक नहीं है तथा उपलब्ध साक्ष्य व सुसंगत परिस्थितियों से जांच अधिकारी को संभावनाओं के आधार पर यह विनिश्चय देना आवश्यक है कि कोई भी विनिष्ठ तथ्य साबित होता है या नहीं। इस संबंध में उन्होंने माननीय सर्वोच्च न्यायालय का निर्णय महाराष्ट्रा स्टेट बोर्ड ऑफ सैकेण्डरी ऐजुकेशन बनाम के.एम. गांधी एम.एल.आर. 1991(2) 682 प्रस्तुत किया है। इस विधि दृष्टान्त में साक्ष्य के विवेचन व किसी भी तथ्य को विभागीय जांच में साबित मानने के लिए जो मापदण्ड निर्धारित किया गया है उनको देखते हुए जांच अधिकारी द्वारा प्रथम आरोप के संबंध में जो विनिश्चय दिया गया है उसको अनुचित नहीं माना जा सकता।

8. श्रमिक के विरुद्ध दूसरा आरोप यह है कि उसने बैंक के ऋणी हीरालाल से अगस्त 1983 में 200/- रुपये उसके ऋण खाते में जमा करवाने के लिए प्राप्त किये व उन्हें 10-11-83 को जमा कराया जिस राशि हीरालाल द्वारा बैंक में शिकायत की गई। गवाह जो इस संबंध में बैंक द्वारा प्रस्तुत किये गये हैं उनमें सर्वश्री राव, मधुसूदन व बाई.के. बैरर जो बैंक के अधिकारी व कर्मचारी हैं। इसके अतिरिक्त हीरालाल द्वारा प्रस्तुत की गई लिखित शिकायत प्रदर्श एम-2 भी साक्ष्य में प्रस्तुत हुए हैं। इन गवाहान के अलावा स्वयं हीरालाल को भी साक्ष्य में नियोजक की ओर से प्रस्तुत किया गया है। हीरालाल ने अपने कथन में आरोप का समर्थन नहीं किया है व यह बताया है कि

उसने उधर 200/- र. परमराम को जमा करने के लिए दिया थे व 10-11-83 को वह बैंक में यह जानकारी करने गया था कि उक्त रकम जमा हुई या नहीं। लिखित शिकायत के संबंध में उसका कथन है कि बैंक अधिकारियों ने ब्याब डालकर उसमें रिपोर्ट लिखवाई थी। उसका यह कथन निश्चित रूप से अस्वाभाविक है क्योंकि किसी भी गवाह की साक्ष्य में यह नहीं आया है कि बैंक अधिकारी की कोई रजिश्त श्रमिक के साथ थी जिस कारण फर्जी शिकायत हीरालाल से प्राप्त की गई। हीरालाल बाद में परोक्ष कारण से पक्षद्वी हुआ है यह मानना स्वाभाविक है। हीरालाल के अलावा बैंक जो अधिकारी व कर्मचारी साक्ष्य में आये हैं उन्होंने यह साबित किया है कि लिखित शिकायत हीरालाल ने प्रस्तुत की थी, 10-11-83 को 200/- रुपये श्रमिक ने फार्म भरकर बैंक में जमा कराये थे व उस फार्म पर ऋणी के हस्ताक्षर नहीं हैं जो सामान्य परिस्थितियों में नियमानुसार करवाये जाते हैं। बैंक अधिकारियों व कर्मचारियों की उक्त साक्ष्य का विश्वसनीय नहीं मानने का कोई भी आधार नहीं है व उनकी साक्ष्य पर विचार करते हुए जांच अधिकारी ने आरोप प्रमाणित मानने का जो विनिश्चय दिया है वह न्यायाधिकरण की राय में पूरी तरह उचित है। माननीय सर्वोच्च न्यायालय का प्रथम आरोप के बावत संबन्धित विधि दृष्टान्त जो नियोजक की ओर से प्रस्तुत किया गया है उसको देखते हुए भी जांच अधिकारी का विनिश्चय सही मानने योग्य है।

9. तीसरा आरोप श्रमिक के खिलाफ जो साबित माना गया है वह यह है कि श्रमिक ने पंजाब एवं सिंध बैंक के समक्ष कुछ व्यक्तियों को ऋण दिलाने में अपनी गारंटी प्रस्तुत की व उनकी सहायता की जबकि श्रमिक को यह जानकारी थी कि उन व्यक्तियों ने विपक्षी बैंक से भी ऋण लिया हुआ था व वहां से अनापत्ति प्रमाण पत्र प्राप्त नहीं किया था। पंजाब एवं सिंध बैंक का कोई भी गवाह इस संबंध में प्रस्तुत नहीं हुआ है व विपक्षी बैंक के अधिकारी श्री राव ने यह बताया है कि इन तथ्यों की जानकारी उन्हें पंजाब एवं सिंध बैंक द्वारा मौखिक दी गई थी। प्रत्यक्ष कोई भी साक्ष्य से प्रस्तुत नहीं किया गया है। जांच अधिकारी ने अपने विनिश्चय में यह बताया है कि स्वयं श्रमिक ने यह माना है कि उसे इस बात की जानकारी थी कि जिन व्यक्तियों ने पंजाब एवं सिंध बैंक से ऋण प्राप्त किया उन्होंने पूर्व में भी विपक्षी बैंक से ऋण प्राप्त किया हुआ था। वही के समय नियोजक के प्रतिनिधि को यह बताने का अवसर दिया गया कि बैंक के नियमानुसार विपक्षी संस्थान से अनापत्ति प्रमाण पत्र प्राप्त किए बिना पंजाब एवं सिंध बैंक से संबंधित व्यक्तियों द्वारा ऋण प्राप्त नहीं किया जा सकता था। किन्तु उन्होंने ऐसा कोई नियम प्रस्तुत नहीं किया है। ऋण हेतु प्रस्तुत किए हुए प्रार्थना पत्र भी साक्ष्य में उपलब्ध नहीं हैं जिससे यह पता चला सके कि दूसरे ऋण के संबंध में क्या गतियां थीं, व उनकी किस प्रकार संयोजन की गई। उसके अलावा पंजाब एवं सिंध बैंक

की कोई निश्चित शिकायत भी रिकार्ड पर उपलब्ध नहीं है। श्रमिक ने बयान में कहा है कि जिन समय उक्त ऋण स्वीकृत होने का तथ्य है उस समय कोई व्यक्ति की गारंटी आवश्यक नहीं थी व न ही यह जरूरी थी कि पूर्व ऋण के संबंध में अनापत्ति प्रमाण पत्र प्राप्त किया जाए। इस प्रकार समस्त उपलब्ध साक्ष्य व परिस्थितियों से यह मानने का आधार नहीं है कि श्रमिक ने पंजाब एवं सिंध बैंक के समक्ष जिन व्यक्तियों के ऋण के जवाब गारंटी दी व गैर विपक्षी बैंक के कर्मचारी होने के नाते दुराचरण की परिभाषा में आता है व इस प्रकार इस आरोप को प्रमाणित मानने का जो विशिष्ट जांच अधिकारी ने किया है वह गरीब नहीं है।

10. श्रमिक के विद्वान प्रतिनिधि ने बहस में ऐसा कोई तर्क प्रस्तुत नहीं किया है कि जिससे यह माना जावे कि प्रमाणित आरोपों को देखते हुए जो दण्डादेश श्रमिक के खिलाफ पारित किया गया है वह कठोर या अन्यायिक है। धारा 11-ए अधिनियम के प्रावधानों के अलावा इस प्रकार के मामलों में न्यायाधिकरण दण्डादेश के संबंध में हस्तक्षेप करने के लिए अति विशिष्ट परिस्थितियों के अलावा सक्षम नहीं है यदि यह माना जावे कि जांच उचित रूप से हुई है व आरोप उपलब्ध साक्ष्य से साबित हैं। नियोजक की ओर से इस संबंध में 1990(3) एम. एल. आर. (आन्ध्र प्रदेश 151) का एक निर्णय प्रस्तुत किया गया है। इसके अलावा माननीय राजस्थान उच्च न्यायालय द्वारा मिखिल डी. बी. अपील नं. 197/93 में 205/93 निर्णय दिनांक 6-4-94 में इस संबंध में जो सिद्धान्त प्रतिपादित किए गए हैं उनका अध्ययन करने से यह स्पष्ट है कि प्रस्तुत मामले के समस्त तथ्यों व परिस्थितियों की देखते हुए श्रमिक के खिलाफ पारित दण्डादेश में किसी प्रकार का हस्तक्षेप करने का न्यायोचित कारण उपलब्ध नहीं है। यह उल्लेख किया जाता भी आवश्यक है कि श्रमिक के खिलाफ विभागीय जांच में जो आरोप प्रमाणित माने गए हैं वे दण्डादेश के व श्रमिक की नैतिकता से संबंधित हैं व इस कारण नियोजक द्वारा दण्ड के मामले में उदार व नर्म कार्यवाही श्रमिक के मामले में की गई है।

11. निर्देशित विवाद में अधिनिर्णय इस प्रकार किया जाता है कि नियोजक पंजाब नेशनल बैंक, जोधपुर द्वारा श्रमिक टी. आर. जियर के खिलाफ तीन वार्षिक वेतन वृद्धियां स्थाई रूप से रोकने का जो दण्डादेश पारित किया है वह उचित एवं बंध है व श्रमिक कोई राहत प्राप्त करने का अधिकारी नहीं है।

12. प्रवार्ड आत्र दिनांक 21-10-94 को लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ निवेदन नुसार भेजा जाए।

के. एल. व्यास, पीठासीन अधिकारी
नई दिल्ली, 29 मई, 1995

का. आ. 1806.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ हैदराबाद के प्रबन्धतंत्र के संबंध में निम्नलिखित आदेशों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-5-95 को प्राप्त हुआ था।

[सह्या एल.—12012/76/93—आई आर (बी-आई)]

पी. जे. माइकल डेस्क अधिकारी

New Delhi, the 29th May, 1995

S.O. 1806.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Hyderabad and their workmen, which was received by the Central Government on 29-5-1995.

[No. L-12012/76/93-IR (B-I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I HYDERABAD
PRESENT :

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.

Dated, 31st day of March, 1995

Industrial Dispute No. 35 of 1993

BETWEEN

Smt. E. Premalatha Nicholas,
W/o Sri B. Nicholas,
H. No. 3-4-351 Lingampalli,
Hyderabad-500027

.. Petitioner

AND

General Manager,
State Bank of Hyderabad,

Guntoundry, Hyderabad-500001

.. Respondent

APPEARANCES :

M/s. G. Bikshapathy, G. Vidya Sagar and others,
Advocates—for the Petitioner.

M/s. K. Srinivasa Murthy, G. Sudha, Advocates—for
the Respondent.

AWARD

This is a reference made under Section 10(1)(d) of (2-A) of the Industrial Disputes Act, 1947 (hereinafter called the Act) by the Government of India, Ministry of Labour, by its Order No. L-12012/76/93-IR (B-I) dated 21-9-1993 for adjudication of the dispute mentioned in its schedule which reads as follows :

"Whether the management of State Bank of Hyderabad is justified in terminating the services of Smt. Premalatha Nicholas w.e.f. 26-9-1982? If not, to what relief she is entitled to?"

The reference has been registered as Industrial Dispute No. 35 of 1992. After receipt of the notices issued by this Tribunal, the Petitioner and the Respondent are being represented by their counsel.

2. A claim statement has been filed on behalf of the Petitioner-workman to the following effect :—

The Petitioner-workman was appointed as Clerk in the Respondent-Bank on 1-8-1967 and the services were confirmed on 1-2-1968. She has been performing the duty to the entire satisfaction of her superiors. The husband of the Petitioner workman was working in Libya and he had fallen ill and was advised to undergo surgery. Hence the Petitioner-workman submitted a leave letter dated 14-6-1982 requesting

for sanction of six months extraordinary leave so as to enable her to proceed to Libya to attend on her ailing husband. The Respondent Bank issued a letter dated 23-6-1982 rejecting the request of the Petitioner for grant of extraordinary leave. The Petitioner's husband proceeded to London and underwent surgery on 12-8-1982. The Petitioner having come to know that the Management was addressing letters to her local address at Hyderabad and addressed a letter dated 18-9-1992 from London for a sanction of leave and she was awaiting reply. In February 1983 the Petitioner was informed that the Respondent Bank had issued a publication in the newspaper on 28-9-1992 alleging that absence of the petitioner was treated as voluntary vacation of services. Thereafter the Petitioner made representation requesting the Bank to look into the matter and reinstate her in service. As there was no response, the Petitioner filed a Writ Petition No. 8655/84 in the High Court of Andhra Pradesh. The Hon'ble High Court by its order dated 24-9-1987 directed the Petitioner to approach the machinery provided under the Industrial Disputes Act. Aggrieved by that order, the Petitioner preferred an appeal in W.A. No. 336/88 which was also dismissed on 20-4-1992 with a direction that if the Petitioner raise the dispute under the Industrial Disputes Act, 1947 within 30 days, the same may be entertained according to law by the concerned authorities. In pursuance of the order of the Hon'ble High Court, the Petitioner moved the conciliation machinery and the conciliation proceedings ended in failure and the failure report was sent to the Government of India, Ministry of Labour and thereafter this reference has been made by the Government of India

As per the Bipartite Settlement, the employee of the State Bank of Hyderabad is entitled to extraordinary leave as the petitioner was under compulsion to attend on her husband who was ailing in Libya. The petitioner was forward by circumstances to apply for extraordinary leave. The action of the Respondent-Bank in not sanctioning the leave is arbitrary and unjust. The action of the Respondent Bank in addressing letters to the local address of the petitioner although fully aware that the petitioner had proceeded out of the country is discriminatory and amounts to unfair labour practice and that under Chapter 19.7 (a) of the Bipartite Settlement, absence without leave or over-staying the sanctioned leave without sufficient grounds is a minor misconduct. Therefore, the Management ought to have initiated disciplinary proceedings under the Settlement before taking any action or imposing punishment. Admittedly no disciplinary proceedings were initiated against the petitioner. Therefore, the entire proceedings of the Bank are illegal and contrary to the provisions of the Bipartite Settlement. The Bipartite Settlement does not contemplate voluntary cessation of employment by its employees. But for the first time by the Settlement dated 8-9-1983 voluntary cessation was incorporated under Clause 2 of the Settlement which comes into operation only w.e.f. 8-9-1983. Therefore the action of the Management in treating the petitioner's absence as voluntary cessation is without jurisdiction. The action of the Bank in dispensing with the enquiry amounts to retrenchment under Section 25-F of the Act as there is no reason for terminating the petitioner. The Respondent has not followed the provisions of Section 25-F of the Act, before passing the impugned order. The Respondent Bank had not looked into the past service record of the Petitioner and as such it is arbitrary and unjust. The Petitioner has not committed any misconduct warranting the major punishment of dismissal from service. No enquiry was conducted into the charges alleged against the Petitioner. No reasonable opportunity was given to the Petitioner before terminating her services. The action of the Respondent in terminating the services of the Petitioner amounts to

retrenchment as defined under Section 2(oo) of the Act and the Petitioner was not given one month notice pay or retrenchment compensation as contemplated under Section 25-F of the Act before terminating her services. Hence the Petitioner prays that the action of the Management in terminating the services of the Petitioner w.e.f. 26-9-1982 as illegal, arbitrary and consequently direct the Management to reinstate the petitioner workman into service with back wages, continuity of service and all other attendant benefits.

3. On behalf of the Respondent-Bank counter has been filed to the following effect :—

The petitioner got sanctioned ordinary leave from 29-9-1980 to 23-10-1980 on the ground that she has to visit her sister-in-law who was abroad and who lost her husband there. Subsequently the Petitioner sent an application from Libya seeking extension of leave on the ground of her sickness stating that she was suffering from Cock's disease enclosing a medical certificate to that effect from Libya Arabian Republic. The petitioner was sanctioned extraordinary leave for 520 days from 11-11-1980 to 23-4-1982. Thereafter the Petitioner came back to India and joined duty on 26-4-1982. The petitioner worked for two months and then again applied for extraordinary leave for six months w.e.f. 5-7-1982. As per the provisions of Bipartite Settlement, extraordinary leave can be granted to an employee when no ordinary leave except in exceptional circumstances, and the duration of extraordinary leave shall not exceed three months on any one occasion and 12 months during the entire period of an employee's service. As the Petitioner already availed and exhausted her entire eligibility of sanctioning extraordinary leave, her application was rejected. The petitioner was directed to report to the Bank Medical Officer for necessary medical check up. Instead of complying with the direction the Petitioner applied for extraordinary leave for six months. The Petitioner was fully aware that the leave was not granted and in spite of it she had chosen to proceed on leave without intimation to which address should the Bank correspond. Therefore the Bank communicated information to the address previously given by the Petitioner as per the records. The Petitioner having kept quiet from 1982 onwards filed conveniently Writ Petition and Writ Appeal and prosecuted the matter in the High Court knowing fully well that she is covered under the Industrial Disputes Act as there is an alternate remedy. The dispute raised by the Petitioner is not maintainable in law. The Petitioner is no more on the rolls of the Bank and she was deemed to have voluntarily vacated Bank service with effect from 25-9-1982. The Bank is not concerned with the ill-health of the Petitioner's husband. The letter dated 18-9-1982 sent by the Petitioner from abroad was received by the Bank on 14-10-1982. Before that letter was received, the Bank had sent two letters dated 14-8-1982 and 30-8-1982 to the Petitioner's last known address at Hyderabad directing her to report for duty but the Petitioner failed to comply with it. In the said letters, it was made clear that on failure to report for duty the petitioner would be deemed to have voluntarily vacated her service. The petitioner did not inform the Bank when she left for Libya, London or any other place. Hence the Respondent-Bank correctly and rightly corresponded with the Petitioner to the address available on record. The Respondent Bank sent a suitable reply on 9-11-1982 to London address and the same was returned with the remark "addressee gone back to India". The publication in the local news paper was made on 18-9-1982. The Petitioner is mis-interpreting Chapter 19 of the Bipartite Settlement. The Petitioner voluntarily abandoned the service and as such it does not come within the purview of misconduct. It is not a case where the Management has to initiate disciplinary action. It does not come within the purview of Section 25-F or Section 2(oo) of

the Act. This case is treated as voluntary abandonment of work by the employee. The Bank cannot keep the post vacant for long. The allegation that the Petitioner could not get alternative employment is incorrect. The Petitioner is not entitled for any relief under this reference.

4. On behalf of the Petitioner-workman WW-1 is examined and Exs. W-1 to W-8 are marked. On behalf of the Respondent-Bank, MW-1 is examined and Exs. M-1 to M-38 are marked. The Petitioner got herself examined as WW-1 and she deposed to the averments made in the claim statement. The Deputy Manager of the Respondent-Bank is examined as MW-1 and he deposed to the averments in the counter. The details of the documents Exs. W-1 to W-8 and M-1 to M-38 marked on behalf of the Petitioner and Respondent respectively are appended to this Award.

5. The points for consideration are (1) whether the Management of State Bank of Hyderabad is justified in terminating the service of the Petitioner Smt. Premalatha Nicholas w.e.f. 26-9-1987? (2) To what relief the Petitioner is entitled?

6. Point (1).—The admitted facts as revealed from the evidence on record are as follows :—

(i) The Petitioner Smt. Premalatha Nicholas was appointed as Clerk in the Respondent-Bank, State Bank of Hyderabad on August 1st, 1967. Her service was confirmed on February 1st, 1968. From 15-9-1980 to 24-8-1980 the Petitioner was on sick leave vide Exs. M-3 and M-4. From 29-9-1980 to 23-10-1980 the Petitioner was granted ordinary leave to enable her to visit her sister-in-law who was abroad and who had lost her husband recently vide Exs. M-1 and M-2. From 24-10-1980 to 23-4-1982 the Petitioner was granted extraordinary leave on Medical grounds vide Exs. M-5 to M-20. During that period, the Petitioner was staying at Libya and she applied for sick leave on the ground that she was suffering from cock's disease and she submitted her medical certificate. As the Petitioner was not having sick leave to her credit, she was granted extraordinary leave for the said period. The Petitioner reported for duty on 26-4-1982. Under Ex. M-21 the Petitioner was directed to appear before the Bank's Medical Officer and obtain fitness certificate with regard to her health. As seen from Ex. M-22 (a) the petitioner appeared before the Bank's Medical Officer on 28-6-1982 and on examination she was found fit.

(ii) The Husband of the Petitioner was working as Engineer in Libya. By the letter dated 22-5-1982 (Ex. M-24) he requested the Petitioner to go over to Libya to attend on him as he had suddenly developed acute pain in his waist and it had diagnosed as kidney trouble and it requires operation. Enclosing that letter, the Petitioner submitted the leave letter dated 14-6-1982 (Ex. M-23) to the Respondent-Bank requesting to grant her six months extraordinary leave so as to enable her to attend on her ailing husband. As seen from Ex. M-25, the Management informed the Petitioner that her request for sanction of extraordinary leave for a period of six months w.e.f. 5-7-1982 cannot be considered. In spite of it, the Petitioner went to Libya, she accompanied her husband to London where he was operated upon on 12-8-1982. Ex. W-5 is the xerox copy of the certificate with regard to the operation done to Mr. D. Nicholas Vidya Sagar, husband of the Petitioner on 12-8-1982.

(iii) The Respondent-Bank issued Memo dated 14-8-1982 (Ex. M-26) and another Memo dated 30-8-1982 (Ex. M-28) to the Petitioner's local address advising her to join duty within 7 days from the date of receipt of those memos. But the said memos were received by one Mrs. Prasad Rao under acknowledgements Exs. M-27 and M-29. As the Petitioner failed to join duty as directed in the Memos Exs. M-26 and M-28, the Management issued publication in the local papers "Eenadu" and "The

Deccan Chronicle" on 18-9-1982 directing the petitioner to report for duty within 7 days from the date of publication. Exs. M-30 and M-31 are the said publications in "Eenadu" and "The Deccan Chronicle" dated 18-9-1982. As the petitioner failed to report for duty in pursuance of the said publication, the Management issued another publication in "Eenadu" and "The Deccan Chronicle" on 6-10-1982 to the effect that as the Petitioner failed to report for duty, she is deemed to have voluntarily vacated the Bank service w.e.f. 25-9-1982. Exs. M-32 and M-33 are the publications in "Eenadu" and "The Deccan Chronicle" dated 6-10-1982 respectively. Thereafter a notice was sent to the Petitioner's local address informing her that as she failed to resume for duty, she is deemed to have voluntarily vacated the Bank service w.e.f. 25-9-1982. Ex. M-34 is the said notice and the said notice was received on behalf of the Petitioner on 30-9-1982 under the acknowledgement Ex. M-35. Under Ex. M-36 dated 18-9-1982 the Petitioner addressed a letter from London to the Respondent Bank once again requesting for sanction of leave. The Respondent Bank sent a reply dated 9-11-1982 (Ex. M-37) to the Petitioner's London address but the same has been returned with an endorsement "Addressee had left to India". Ex. M-38 is the returned cover. Ex. M-38(a) is the content of the returned cover Ex. M-38. It is original of Ex. M-37. Ex. W-3 is the xerox copy of Ex. M-36. Ex. W-2 is the xerox copy of Ex. M-26. Ex. W-1 is the xerox copy of Ex. M-23. Ex. W-4 is the certificate stating that B. Nicholas Vidya Sagar, husband of the Petitioner was suffering from recurrent renal colic and that he had been to London for check up and treatment.

(iv) The petitioner returned back to Hyderabad on 29-10-1983 and reported for duty before the Management of the Respondent-Bank and she was informed that her services were terminated. Thereafter, she filed Writ Petition No. 8655/84 on the file of the High Court of Andhra Pradesh to direct the Respondent to take her back into service. That Writ Petition was dismissed on 24-9-1987 and the preferred writ appeal W.A. No. 336/88 which was also dismissed on 20-4-1992 stating that the Petitioner can as well raise an industrial dispute. Ex. W6 is the xerox copy of the order in the Writ Appeal No. 336/88 on the file of the High Court of Andhra Pradesh. In pursuance of the said order of the High Court, the Petitioner submitted an application (original of Ex. W 7) to the Assistant Commissioner of Labour, Hyderabad. The conciliation efforts made by the Commissioner ended in failure and he submitted his failure report. Thereafter the Government of India, Ministry of Labour, made this reference.

7. The learned counsel for the Respondent-Bank submits that the Petitioner was granted ordinary leave from 29-9-1980 to 23-10-1980 to enable her to visit her sister-in-law who was abroad and who lost her husband and while she was still abroad she applied for sick leave and as sick leave was not having to her credit she was granted extraordinary leave from 24-10-1980 to 23-4-1982 and that the Petitioner reported for duty on 2-4-1982. The learned counsel for the Respondent further contends that the Petitioner applied for extraordinary leave for six months with effect from 5-7-1982 to go to Libya to attend on her ailing husband who was working as Engineer there and though the leave sought for was rejected the petitioner abstained from duty with effect from 5-7-1982 continuously till 25-8-1992 when the impugned order of dismissal from service was passed. The learned counsel for the Respondent further contends that under Bipartite Settlement dated 19-10-66 under Clause 13.34 "an employee of the Bank is entitled for extraordinary leave not exceeding three months on any one occasion and 12 months during the entire period of employee's service and as the Petitioner was already granted more than 570 days, the Management had rightly refused to grant any further extraordinary leave to the Petitioner. The learned counsel for the Respondent further submits that as the Petitioner voluntarily abstained from duty without any sanction of leave w.e.f. 5-7-1982, the

petitioner deemed to have voluntarily abandoned the service and therefore the Management has rightly dismissed the petitioner from service w.e.f. 25-8-1982 after issuing notices and due publication in the local papers.

8. The learned counsel for the Petitioner submits that under Clause 13.34 of Bipartite Settlement, the Management can grant extraordinary leave under exceptional circumstances exceeding three months on one occasion and 12 months during the entire period of an employee's service and that the Petitioner in this case was placed under extraordinary circumstances as she had to attend on her ailing husband at Libya and he was advised operation at London. The learned counsel for the Petitioner further submits that the Bi-partite Settlement dated 19-10-1966 does not contemplate for voluntary cessation of employment by its employees, and for the first time voluntary cessation was incorporated under Clause 2 of the Settlement dated 8-9-1983 which came into effect from 8-9-1983 and therefore, the action of the Management in treating the petitioner's absence as voluntary cessation of her services is without jurisdiction. The learned counsel for the Petitioner further submits under Clause 19.7(a) of Bi-partite Settlement dated 19-10-1966 "absence without leave or over-staying sanctioned leave without sufficient grounds" is a minor misconduct and therefore the Respondent Bank ought to have initiated disciplinary proceedings for the said misconduct before imposing the punishment under Clause 9.8 of the Bi-partite Settlement following the procedure as laid down in Clause 19.13 of the Bi-partite Settlement and the Respondent-Bank has not initiated any disciplinary proceedings before passing the impugned order of terminating the services of the petitioner and as such the order of the Management terminating the services of the Petitioner is not maintainable. The learned counsel for the Petitioner further submits that the termination of the petitioner from service amounts to retrenchment as defined under Section 2(100) of the I.D. Act and it has been done without complying with the provisions of Section 25-F of the I.D. Act and as such the Petitioner is entitled for reinstatement into service with back wages and other consequential reliefs.

9. It is not in dispute that the first Bi-partite Settlement of 19-10-1966, with its varied terms as per the subsequent settlements, is enforceable and it is binding on the parties. Clause 13.34 of the said Bi-partite Settlement relates to granting extraordinary leave and it reads as follows:—

"Extraordinary leave may be granted to an employee when no ordinary leave is due to him. Except in exceptional circumstances the duration of extraordinary leave shall not exceed 3 months on any one occasion and 12 months during the entire period of an employee's service."

Under Clause 13.36 of the Bi-partite Settlement :

"No pay and allowances are admissible during the period of extraordinary leave and the period spent on such leave shall not count for increments."

Therefore, going on extraordinary leave is not a pleasure for an employee as the employee is not entitled for pay and allowance and the period spent on such extraordinary leave does not count for his increment. In the instant case, admittedly the petitioner was granted extraordinary leave for 520 days as she was suffering with Cock's disease while she was staying at Libya and the said extraordinary leave was granted by the Respondent Bank. After recouping her health, the petitioner joined duty with effect from 26-4-1982 and attended the office till 4-7-1982. The petitioner sought for grant of extraordinary leave for six months on the ground that she had to attend on her ailing husband at Libya as he was advised operation at London. Ex. M23 is the original letter of the petitioner's husband dated 22-5-1982 requesting the Petitioner to go over to him as he was suffering with kidney trouble. It is not disputed that the husband of the petitioner underwent surgery at London on 12-8-1982 and Ex. W5 is the xerox copy of the certificate to that effect. Ex. W4 is another certificate to the effect that the petitioner's husband was suffering from recurrent renal colic. On a consideration of these circumstances, I am of the opinion that the Petitioner was justified in applying for extraordinary leave to enable her to attend on her ailing husband at Libya and also to take him to London for operation.

1436 CI/95—4.

10. There is also much force in the contention of the learned counsel for the Petitioner that in the Bi-partite Settlement dated 19-10-1966 which governs both the parties, there is no provision for deeming "voluntary cessation of employment" by the employees of the Bank. As seen from the Settlement dated 8-9-1983 under Clause (2) the provision for voluntary cessation was introduced for the first time and it has come into effect with effect from 8-9-1983. In the absence of provision of voluntary cessation of employment in the Bi-partite Settlement dated 19-10-1966 the Respondent-Bank is not justified in assuming jurisdiction and terminating the services of the Petitioner on the ground that the petitioner deemed to have voluntarily abandoned the service. Therefore the action of the Management in terminating the services of the Petitioner on the ground of voluntary cessation of employment is without jurisdiction and also contrary to the provisions of the Bi-partite Settlement dated 19-10-1966.

11. Admittedly the Petitioner abstained from duty with effect from 5-7-1982 under Clause 19.7(a) of the Bi-partite Settlement dt. 19-10-1966 "absence without leave or over-staying the sanctioned leave without sufficient grounds" amounts to minor misconduct. Clause 19.8 of the Bipartite Settlement prescribe the punishment to be imposed on an employee found guilty under minor misconduct and it reads as follows:—

"19.8 an employee found guilty of minor misconduct may

- (a) be warned or censured; or
- (b) have an adverse remark entered against him; or
- (c) have his increment stopped for a period not longer than six months."

Clause 19.12 prescribes the procedure to be followed while taking disciplinary action for either gross misconduct or minor misconduct. In the instant case, the conduct of the petitioner in her absence from duty without leave, amounts to minor misconduct. Hence the Respondent-Management ought to have taken disciplinary proceedings following the procedure as laid down under Clause 19.12 of Bipartite Settlement. But, for the reasons known to the Respondent-Management, no enquiry was held against the Petitioner for the said minor misconduct on her part. On the other hand, the Management passed the impugned order of terminating the services of the Petitioner on the ground that she voluntarily abandoned her services for which there is no provision in the Bipartite Settlement as discussed earlier. The Respondent Bank is not justified in passing the impugned order of terminating her services without holding an enquiry under the provisions of the Bipartite Settlement.

12. The learned counsel for the Petitioner relied on the decision of the Supreme Court in D. K. Yadav vs. M/s. I.M.A. Industries Ltd. [I.J. T. 1993(3) S.C. page 617]. The facts of that case are similar to the facts on hand. In that case, the allegation of the Management was that the employee wilfully abstained from duty continuously for more than 8 days without leave or prior information or intimation or previous permission from the Management and therefore it was deemed that the employee had left the service of the Company on his own account and therefore the employee was dismissed from service. The Management, in that case, also relied on Clause 13.24 of its Standing Orders which reads that "if a workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment. Their Lordships of the Supreme Court held thus:

"It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice."

Their Lordships set aside the order of dismissal of the employee. In the instant case also the Petitioner has obtained

from duty and it amounts to minor misconduct as per the Bipartite Settlement. No opportunity was given to the Petitioner to put forth her case and no domestic enquiry was conducted. But the Petitioner has been removed from service by deeming that she had voluntarily abandoned her service. For this, there is no provision in the Bipartite Settlement. Therefore, the impugned order terminating the services of the petitioner without holding a domestic enquiry complying with the principles of natural justice is liable to be set aside.

13. There is also much force in the contention of the learned counsel for the petitioner that the termination of the services of the Petitioner with effect from 26th September, 1982 amounts to retrenchment as defined under Section 2(o) of the I.D. Act. Section 2(o) of the I.D. Act reads as follows:

“Retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continued ill-health.”

This section defines “retrenchment” meaning termination by the employer from service of a workman for any reason whatsoever except those expressly excluded in the Section. The termination of the petitioner herein does not fall under the exception mentioned in the section. She was not removed as punishment inflicted by way of disciplinary action taken against her. Therefore, the termination of the services of the petitioner amounts to retrenchment as defined under Section 2(o) of the I.D. Act. Section 25-F of the I.D. Act prescribes mandatory procedure to be followed before the retrenchment becomes valid and legal and violation thereof visits with invalidation of the action with consequential result. Admittedly the mandatory procedure prescribed under Section 25-F of the Act was not followed by the Respondent-Management in retrenching the petitioner herein. Therefore, the action of the Respondent-Bank in putting an end to the employment of the Petitioner is invalid.

14. The learned counsel for the Respondent-Bank relied on the decision of our High Court in *T. Venkateswarlu vs. Branch Manager, State Bank of India, Vijayawada* [1989(3) A.L.T page 549]. In that case, an employee of State Bank of India on deputation abstained from duty, after expiration of deputation period without submitting leave application, for a long period. The employee was deemed to have voluntarily vacated the services. Under para 16 of the Bipartite Settlement dated 17th September, 1984 bearing the title “Voluntary Cessation of employment by the employee”, and the order treating the absence as voluntary retirement from service does not amount to retrenchment under Section 2(o) of the I.D. Act and Section 25-F of the I.D. Act. Under these circumstances the Hon’ble High Court held thus:

“Para XVI of the Bipartite Settlement confers for more beneficial rights on the employee than the one covered by Section 25-F. Under para XVI of the settlement, a workman has a further opportunity to satisfy the employer in certain respects and be allowed to join duty and not lose his service whereas Section 25-F accords the termination by way of retrenchment subject only to the payment of retrenchment compensation. In my view, therefore, such a case falls under the proviso to Section 25-F and therefore Section 25-F cannot be said to override the provisions in para XVI of the Bipartite Settlement. In cases where a settlement provides a better legal right or condition of service which is more beneficial to the workman than the one provided in the Industrial Disputes Act the latter does not override the former.”

In the instant case, the Bipartite Settlement dated 17th September, 1984 was not in existence by the date of the impugned order. Therefore the citation relied upon by the

counsel for the Respondent has no relevancy to the facts in this case. As earlier stated, the Bipartite Settlement dated 19th October, 1966 which was in force by then, does not contain any provision relating to the voluntary cessation of employment of the employee as earlier discussed.

15. In the light of my above discussion, I hold on Point (1) that the Management of the State Bank of Hyderabad is not justified in terminating the services of the Petitioner Smt. Premalatha Nicholas with effect from 26th September, 1982. The point is thus decided in favour of the Petitioner and against the Respondent.

16. Point (2).—This point relates to the relief to be granted to the petitioner. Admittedly the petitioner availed extraordinary leave for more than what she is entitled for under the Bipartite Settlement except under exceptional circumstances. There is nothing on record to show that the Petitioner had submitted her Libya or London address while leaving the country. There is also abnormal delay on the part of the petitioner in seeking the relief from this Tribunal. Admittedly she filed a Writ Petition No. 8655/84 in the year 1984 though her termination was in August 1982. She approached the Assistant Commissioner of Labour only in May 1992 and presented an application, the original of Ex. W7 in pursuance of the direction of the Hon’ble High Court in W.A. No. 336/88 dt. 24-4-1992. Thus there are laches on the part of the Petitioner in seeking redressal of her grievance to this Tribunal. But that itself cannot be a ground to reject her claim. Under these circumstances, the reinstatement of the petitioner with immediate effect and granting of 50 percent of the back wages with effect from May, 1992 the date on which the petitioner approached the Assistant Commissioner of Labour, would meet the ends of justice in this case. In the light of my above discussion, I hold on Point No. 2 that the Petitioner is entitled for reinstatement with immediate effect and the petitioner is entitled for 50 per cent back wages with effect from May 1992.

17. In the result, Award is passed stating (1) that the petitioner is entitled for reinstatement forthwith, (2) the petitioner is entitled for 50 percent back wages from May, 1992. (3) the Respondent is directed to pay the arrears of back wages within three months from the date of publication of this Award. If the Respondent-Bank fails to pay the arrears as directed in time, the petitioner is entitled for interest at 12 per cent per annum. The parties are directed to bear their costs.

The reference is thus answered.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 31st day of March, 1995.

A. HANUMANTHU, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined
for Petitioner :

W.W1 Premalatha Nicholas.

Witnesses Examined
for Respondent :

M.W1 K. N. Jangiah.

Documents marked for the Petitioner :

Ex. W1 22-5-82—Letter written by the husband of W.W1 to W.W1 Xerox copy.

Ex. W2 14-8-82—Xerox copy of the Memo given to W.W1 by the office Manager of S.B.H. H.O. Gunfoundry.

Ex. W3 18-9-82—Request of the petitioner to consider the long leave—regarding.

Ex. W4 —Xerox copy of the Medical Certificate.

Ex. W5 12-8-82—Medical Certificate issued by the Doctor at London.

Ex. W6 —W.A. Order Xerox copy in W.A. No. 336/88.

Ex. W7 —Complaint application under Sec. 2(A) of the I.D. Act.

Ex. W8 7-11-83—Xerox copy of the circular.

- Ex. M1—Leave application of the Petitioner.
 Ex. M2—Letter sanction in the leave.
 Ex. M3—Letter asking for extension of leave.
 Ex. M4—Sanction of leave.
 Ex. M5—Application for extension of leave.
 Ex. M6—Medical Certificate enclosed to Ex. M5.
 Ex. M7—Letter sanctioning the leave.
 Ex. M8—Leave application of the petitioner.
 Ex. M9—Medical Certificate enclosed to Ex. M8.
 Ex. M10—Sanction of the leave.
 Ex. M11—Leave application for leave.
 Ex. M12—Medical Certificate enclosed to Ex. M11.
 Ex. M13—Letter sanctioning of leave of the Petitioner.
 Ex. M14—Leave application.
 Ex. M15—Medical Certificate enclosed to Ex. M14.
 Ex. M16—Letter sending the leave.
 Ex. M17—Omitted by mistake. Hence no document as Ex. M17.
 Ex. M18—Leave application.
 Ex. M19—M.C. enclosed to Ex. M18.
 Ex. M20—Letter sanctioning the leave.
 Ex. M21 10-5-82—Letter directing the petitioner to appear before the Bank Medical Officer.
 Ex. M22—Letter directing the petitioner to appear before the Bank Medical Officer.
 Ex. M22(A)—Endorsement on Ex. M22.
 Ex. M23—Leave application of the petitioner.
 Ex. M24—Letter enclosed to the Ex. M23.
 Ex. M25—Letter of the Management declining the leave of the petitioner.
 Ex. M26—Letter of voluntary vacation of service.
 Ex. M27—Postal acknowledgement to Ex. M26.
 Ex. M28 30-8-82—Notice sent to the Petitioner.
 Ex. M29—Postal acknowledgement to Ex. M28.
 Ex. M30—Publication in Eenadu.
 Ex. M31—Publication in Deccan Chronicle.
 Ex. M32—Publication in Eenadu.
 Ex. M33—Publication in Deccan Chronicle.
 Ex. M34 25-9-82—Order cum notice of voluntary vacation regarding termination of services of the petitioner.
 Ex. M35—Acknowledgement card of the petitioner.
 Ex. M36—Letter requesting for extension of leave.
 Ex. M37 9-11-82—Letter addressed to the Petitioner.
 Ex. M38—Returned cover.
 Ex. M38(A)—Contents of Ex. M38.

नई दिल्ली, 31 मई, 1995

का. आ. 1807.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल रेलवे झांसी के प्रबन्धतंत्र से संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,

कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-5-95 को प्राप्त हुआ था।

[संख्या एल-41012/126/92-आई आर बी आई]

पी जे माईकल, डैस्क अधिकारी

New Delhi the 31st May, 1995

S.O. 1807.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Railway Jhansi and their workmen, which was received by the Central Government on the 31st May, 1995.

[No. L-11012/126/92-IRBI]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, DEOKI

PALACE ROAD, KANPUR

Industrial Dispute No. 109 of 1993

In the matter of dispute between:

President,
 Rashtriya Chaturth Shreni Rail Mazdoor Congress.
 2/236 Namneir,
 Agra.

AND

Divisional Railway Manager,
 Central Railway,
 Jhansi.

AWARD

1. Central Government, Ministry of Labour, vide its notification No. L-41012/126/92 IR.DU dated 7th December, 1993, has referred the following dispute for adjudication to this Tribunal—

Whether action of the management of Divisional Railway Manager, Central Railway Jhansi, in not posting Shri Hari Singh S/o Sri Bhikam Singh as permanent APM giving him the seniority over his juniors is justified? If not, what relief the workman is entitled?

2. In the instant case despite availing of sufficient opportunity neither the concerned workman appeared nor the Union filed its statement of claim. As such it appears that neither the Union nor the concerned workman is interested in prosecuting the present reference.

3. Therefore, in view of the above, the present reference is answered in affirmative holding that neither the union nor the concerned workman is entitled to any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 31 मई, 1995

का. आ. 1808.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण रेलवे, के प्रबन्धतंत्र से संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-5-95 को प्राप्त हुआ था।

[संख्या एल-41012/96/92-आई आर बी आई]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 31st May, 1995

S.O. 1808.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Southern Railway, and their workmen, which was received by the Central Government on the 31st May, 1995.

[No. L-41012/96/92-IRBI]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Wednesday, the 22nd day of March, 1995

PRESENT:

Thiru K. Ponnusamy, M.A.B.I., Industrial Tribunal.
Industrial Dispute No. 97 of 1993

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workman and the Management of Southern Railways, Madras-3).

BETWEEN

Shri P. Ramaniah,
No. 5, Dkappa Naidu Street,
Near Korukkupet,
Madras-600021.

AND

The General Manager,
Southern Railway,
Madras-600003.

REFERENCE:

Order No. L-41012/96/92-IR(D), dated 30th September, 1993, Ministry of Labour, Government of India, New Delhi.

This reference has been made for adjudication of the following issue:

"Whether the action of the Management of Southern Railway, in removing Shri P. Ramaniah, Highly Skilled Grade-I with effect from 3rd June, 1987 from service is legal and justified? If not, what relief is the concerned workman entitled to?"

This dispute coming on for final hearing on Thursday, the 9th day of March, 1995, upon perusing the reference, Claim and Counter statements and all other material papers on record, upon hearing the arguments of Thiru G. Mukundan, Advocate appearing for the workman, and of Thiru R. Venugopalan, Advocate appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

2. The case of the petitioner briefly stated is as follows:

The petitioner was appointed as Khalasi on 10th April, 1978 in the Railway Press, Royapuram, against short fall vacancy of SC/ST candidates. The application for appointment was also written on his behalf by one of the railway officials who was attending to the selection of Khalasis at that time. The petitioner only handed over to that official whatever records he had, including the transfer certificate issued to him by the school in which he had studied. Based on this, the application was prepared for him, that he was asked to sign the application and he was selected. Thus, from April 1978 till May 1987 he was working in the press, honestly and efficiently to the satisfaction of his superiors. During the period of service of nearly a decade, there was not even a single adverse remark about his work nor was he punished for any grave misconduct. The petitioner within a year of his joining in Railway Service, as is required, had given a declaration of composition of his family for claiming the benefits available to his family members. In this declaration he

has truth fully and honestly given the date of birth of his wife as that of 16th February, 1956 and that his first son's date of birth as that of 10th May, 1967. These records are available with the respondent railway management from 21st February, 1979 itself. Nearly after 8 years the respondent Railway Management has chosen to verify the records of service of the petitioner and found that there was a discrepancy in the age of the petitioner in comparison with the date of birth of his first son declared by him truthfully in the beginning of the year 1979. It was found by the respondent Management that the petitioner's date of birth was mentioned in his application while applying for the post as 5th April, 1953 and the date of birth of his first son as declared by the petitioner himself was 10th May, 1967. This raised scepticism in the minds of the respondent Management which assumed that the petitioner had deliberately concealed his age and falsely declared that he was born on 5th April, 1953 instead of 5th April, 1943. And that such false declaration by the petitioner, is presumed to be given to the respondent-management, with the sole intention to secure the job hiding that he was over aged for selection. He was charge sheeted by a charges memorandum No. PS/PB 227/8/1429/199 dated 3rd June, 1986. He did not accept the charges and thereupon an enquiry was conducted on the charges framed against him, at Madras on 11th February, 1987, and at Kovur and Nellur on 25th February, 1987. He was given copies of various records. The Enquiry Officer correctly found out as to where the mischief was done and the school authorities accepted that they have issued the TC inadvertently mentioning in it, the date of birth of the petitioner, as 5th April, 1953 even though the actual date of birth was recorded in the record sheet as 5th April, 1943. From this evidence, it is clear that there was no intentional false declaration by the petitioner. During the time of his applying for job as he was 32 plus 11 months years old when the notification for employment was published. Since, the employment was for the reserved category of SC/ST he was under the impression that he is eligible for recruitment with the concessional age exception given by special provision of statute. The Enquiry Officer told that the petitioner was guilty of false declaration and thus it was an act unbecoming of Railway Servant. His services were then terminated with effect from 3rd June, 1987. He appealed to higher authorities by way of a Review petition which was also rejected on the ground that the higher authority could not find any reason for delay. The petitioner respectfully submits that the enquiry officer erred in holding that the petitioner deliberately declared a false date of birth only to get employment, without considering the fact that the application for employment by the petitioner was not at all written by him and that it was written on his behalf only by an official then in charge of recruitment and that the petitioner had just signed the application at the behest of the official and such an application cannot be treated as a declaration made by the petitioner. The Enquiry Officer further failed to give weightage for the solid peace of evidence of the school authorities letter admitting the fact that it is they who have wrongly dated in the TC as 5th April, 1953 instead of 5th April, 1943. Further, it is also substantiated by the fact that the petitioner has truthfully declared his first son's date of birth within a year from the commencement of his employment. Had he joined the service, only by such deliberately and falsely declared date of birth, his memory not have failed to caution his while declaring his son's age because he was honest enough to show that TC issued to him to the authorities concerned at the time of his recruitment and that it is only that authority recorded his age and was found in the TC produced by him. Hence there is no question of deliberate false declaration as alleged by the respondent Management and it is pity that the respondent-management has resorted to inflicting the maximum severest punishment of dismissal from service holding the petitioner guilty of false and deliberate declaration which is unbecoming of a Railway Servant. The respondent-management has further erred to consider the specific plea taken by the petitioner during the domestic enquiry itself that his appointment as Khalasi is not disqualified on 10th April, 1978 even assuming the petitioner has given the actual date of birth i.e. 5th April, 1943 since the concessional age limit for SC candidates for appointment was 35 years then. The respondent-Management has also erred while disposing of the petitioner's appeal against the punishment awarded to him by holding that they did not see any reason for condoning the delay in filing the review petition. The petitioner begs to state that there is no time

limit provided in the Railway Servants (Discipline and Appeal) Rules, 1968 and that the petitioner had also not inordinately delayed, in filing the review petition. In fact the petitioner was not at all aware of the provision of review in Railway Rules, and that he was silently suffering with the punishment awarded to him in his advanced middle age with hardly a decade's service left over before attainment of superannuation. It is really strange for the respondent-management for picking up only the petitioner to verify records after nearly a decade's service. When the petitioner declared his first son's age in 1979 itself, this could have being verified and action taken but the respondent Management's verification of the records of service of a honest workman all of a sudden after ten years, makes it clear that it is a victimisation to which the petitioner was subjected to. The respondent Management is estopped from denying the employment after nearly a decade's service on the ground that they have powers to verify the service records any time during or after a person's service only to dub him that he has committed an offence of false declaration. The action by the respondent in removing the services of the petitioner is not only illegal but also unjustified against the principles of natural justice. He prays that this Tribunal be pleased to pass an award directing the respondent to reinstate the petitioner in service with effect from the date he was illegally discharged, with all back wages, and consequential benefits, & promotions that were due to him as if the petitioner has been in continuous service.

3. The defence of the respondent briefly stated is as follows: The petition is not maintainable either in law or in fact. The petitioner has purposely omitted to implead the Controlling Officer viz., the Superintendent, Printing & Stationery, Southern Railway Press, Royapuram, to mislead the Court. He has impleaded only the General Manager, who is the de-facto Head of the Railways under whom several departments are functioning employing lakhs of employees in various functions. The petition may be dismissed on this account also. The petitioner was appointed as Khalasi on 10-4-78 in the Railway Printing Press/RPM against a short fall vacancy of ST as the petitioner belongs to ST community. He has declared his date of birth as 05-04-53 and produced a school certificate to that effect. The petitioner has submitted a declaration of his family composition for the issue of pass & PTOs. Ramanaish his date of birth as 05-04-1953. His wife's date of birth as 16-2-56 and his first son's date of birth as 10-3-1967. This raised suspicion and the case was referred to vigilance branch/Southern Railway for further investigation. On verification from the school records the correct date of birth of the petitioner was ascertained as 5-4-43. The petitioner was charge sheeted for furnishing wrong date of birth as 5-4-53 instead of 5-4-43 as otherwise he would have been over aged for the post of Khalasi. The normal age for ST candidates for appointment is 33 years, only whereas the petitioner was 35 years at the time of appointment by furnishing false declaration of his age as 5-4-53 instead of 5-4-43. A domestic enquiry was ordered and during the enquiry the headmistress of the school where he studied was examined. She has given a statement that the date of birth of the petitioner is 5-4-43 and not 5-4-53 and produced the original school admission register for verification of the enquiry officer and also the petitioner and the petitioner has accepted the correctness of the admission register as his date of birth was entered as 5-4-43. The petitioner was given all opportunities to defend his case. The Enquiry Officer found him guilty and submitted his report. Accepting the findings of the Enquiry Officer, he was issued with a penalty advice enclosure copies of the enquiry proceedings removing him from service w.e.f. 1-6-1987. His appeals to Controller of Stores and General Manager, Southern Railway were rejected. His review petition was also rejected. The allegation of the petitioner that he was not overaged for the appointment against ST quota is not correct. The maximum age limit for appointment for ST candidates was 33 years, and he was overaged by his original date of birth as 5-4-43. The petitioner was removed from service after following the prescribed procedures as per the norms and they have no violation of the principles of natural justice. The petitioner was removed from service on 1-6-87 for furnishing in false declaration of his date of birth at the time of his appointment. He is not entitled for re-instatement with back wages. It is therefore prayed that this Tribunal be pleased to dismiss the petition with cost.

4. The Issue for decision is :

"Whether the action of the Management of Southern Railway in removing Shri P. Ramanaish, Highly Skilled Grade-I with effect from 3-6-1987 from service is legal and justified? If not, what relief is the concerned workman entitled to?"

5. The Issue.—The petitioner was appointed as Khalasi, w.e.f. 10-4-1978, subject to the conditions that his services will be termed temporary that in the first year he should be deemed to be under probation, that he is not entitled to any notice of termination of the services or pay in lieu thereof and his services will be terminated on one month notice on either side, etc. is borne out by Ex. W-1. The petitioner previously worked as a casual labourer and later on selected and appointed as temporary khalasi. His case is that he has not given his wrong date of birth with intention to get job. His date of birth is 5-4-1943 as per the school admission Register but he has given his date of birth as 5-4-53 in his application for the appointment. He contravened Rule 3(1)(i) and (ii) of Railway Services (Conduct) Rules, 1966. So, he was charge sheeted, is established by Ex. W-2. The discrepancy in his date of birth was detected on 21-2-79, when he gave his family composition, stated his date of birth as 5-4-53 instead of 5-4-43, that he was overaged for the post applied and he deliberately declared false date of birth, he would not have been considered at all for the post he applied and the Certificate with regard to his date of birth as 5-4-43 is not bona fide, is made out by Ex. W-2. Charge memo was issued to him is established by Ex. W-3. The petitioner was aged 35 years at the time of appointment and that he intentionally gave false date of birth by reducing his age by 10 years for making him eligible for appointment as temporary khalasi. The Head Mistress of the School in which the petitioner studied, on 6-3-86 gave a letter to the Vigilance Officer that as per the School admission register, his date of birth is 5-4-43. But in the transfer certificate his date of birth is wrongly written as 5-4-1953 instead of 5-4-1943. The Vigilance Officer after careful perusal of the school records he detected that the petitioner's real date of birth is 5-4-43. Domestic enquiry was ordered and conducted. The petitioner was charge sheeted, is established by Ex. W-3. The petitioner participated in the domestic enquiry and he was given sufficient full and reasonable opportunity to cross-examine the management witness, to defend the case, and adduce evidence on his side, is evident from Ex. W-4. His age at the time of appointment is 33 years and 11 months. The normal age for the appointment of temporary khalasi is 25 years plus 5 years. His case is that his date of birth was filled up by a railway official. The name of the railway official by whom his age is alleged to have been filled up and the application for appointment of temporary Khalasi is not mentioned by the petitioner. He has not given any reason for non-mentioning of the name of the railway official who is alleged to have filled up the form. The burden lies on him to prove that the application was filled up by the Railway official. He has not examined the railway official who is alleged to have filled up the application form, to support his contention that he has not filled up the same. He has not given the reason for the non-examination of the railway official who is alleged to have filled up the application form. Normally the application form is filled up by the candidate himself. He has not even summoned the official, who is alleged to have filled up the application, form.

6. Onus of proof lies upon the petitioner. He has completed 33 years on the date of application and he was 32 years at the time of giving application is not proved by any acceptable documentary evidence by the petitioner. In his family, composition declaration he has given his date of birth as 5-4-1953, instead of 5-4-1943. He knows that his original date of birth is 5-4-1943. But inspite of this fact, he has given his date of birth as 5-4-1953 in his family composition declaration to obtain pass and PTs. The contention of the respondent that the petitioner intentionally gave his false date of birth reducing by 10 years to make himself eligible for the appointment as Khalasi. His contention that his declaration of his date of birth as 5-4-1953 is not intentional to make him eligible for the appointment as temporary khalasi, is unbelievable. The incorrect date of birth entered in his T.C. which was issued by the Head Mistress of the School in which he last studied establishes his contention that he had no intention to give false date of birth or commit any fraud with regard to his

date of birth is untenable. He was terminated from service. He preferred an appeal is disclosed by Ex. W-5 and it was dismissed. He preferred a second appeal which received the same fate, is disclosed by Ex. W-6. His appeal to Deputy CCS/2/PM was also dismissed. He preferred a revision to the General Manager, Southern Railway, and it went against him, is supported by Ex. W-8. He filed the Complaint before the Asst. Commissioner of Labour (Central), is evidenced by Ex. W-9. The respondent contested before the Conciliation Officer is substantiated by Ex. W-10. The Conciliation ended in failure, is made out by Ex. W-11. He filed a petition before the Industrial Tribunal, I.D. No. 97/93 is disclosed by Ex. W-12. Respondent filed reply counter. The aforesaid Counter is evidenced by Ex. W-13. Head Mistress of the School gave certificate of the original of Ex. W-14, that according to School admission register, his real date of birth is 5-4-1943 but it has been wrongly entered in T.C., as 5-4-1953, is disclosed by Ex. W-14. After enquiry, charge sheet was filed after delay of 8 years. The delay is due to enquiry by the officials.

7. The application dated 2-4-77 was sent by post. It cannot be asserted that the application was written by a railway official, and that previously the petitioner worked for a month or two. The petitioner knew his correct date of birth as 5-4-1943. He ought to have asked the Headmistress, or the school to write the correct date of birth in the Transfer Certificate. He has not done so for the obvious reasons best known to him. The petitioner has not asked the official of the School to correct his date of birth, as 5-4-43 in the Transfer Certificate. He has not done so with ulterior motive and purpose for entry into railway service and to serve 10 more years after his superannuation. The person who prepared the Transfer Certificate of the petitioner is highly irresponsible, careless and reckless. The application is dated 2-4-77. Age relaxation for SC, and ST is 5 years. Eligible age is 30 years. But, his age was 32 years and 11 months. On 10-4-78 the date of appointment his age was 35 years. He was removed from service w.e.f. 1-6-87 and thereafter he has produced the certificate dated 7-11-88, of the original of Ex. W-14. This Certificate was not issued by the Head Mistress of the school concerned. The petitioner with the connivance of school staff obtained the Transfer Certificate that his date of birth is 5-4-1953. His sole aim and object is to get a job in railway. At the time of applying for the post his age must be 33 years. On the date of notification of the publication, the petitioner was overaged by 11 months and 27 days. The petitioner cannot plead ignorance of the fact regarding his actual date of birth. The petitioner deliberately, want only fraudulently, and with intention, he gave wrong declaration that his date of birth is 5-4-1953 instead of 5-4-43. On 5-4-43 the petitioner was aged about 14 years. The age of his wife is 11 years. The age of his first son is 10 years or 11 years. The petitioner has violated the rules. At the time of publication of notification to appoint temporary khalsias, the petitioner was about 34 years old and overaged and he was not qualified for appointment as khalsi and he was overaged. The fact that the petitioner produced the family composition details in 1979 to obtain pass & PTs to his family. He has declared his date of birth as 5-4-1953, categorically establishes his dishonest intention for his entry into the railway service, by false declaring his date of birth as 5-4-1953 instead of 5-4-1943. So, the petitioner had intention to misrepresent and get benefit by giving wrong declaration, when he fully knows that his date of birth is wrongly entered as 5-4-1953. At the time of his declaration of his family composition when he applied for pass, he ought to have given his correct date of birth. On the other hand he has given false declaration, of his date of birth as 5-4-53. His wife's date of birth is 16-2-56. The date of birth of his first son is 10-5-1967. Even assuming that application was written by a railway official, he sent it with negligence without verifying the correctness of his date of birth as 5-4-1943 instead of 5-4-1953. Non-production of the notification published by the respondent is not a ground to draw adverse inference against the respondent, since at the time of the notification petitioner was overaged. The wrong declaration of the date of birth by the petitioner cannot be considered as error, or ignorance or mistake. The petitioner has not taken any steps to correct his date of birth as 5-4-1943 until his real date of birth is detected by the higher official, is established by the fact that the petitioner gave a false declaration of his date of birth to get an appointment on the railways. The petitioner failed to maintain integrity and he has behaved in a manner unbecoming of a railway servant since he has given a false declaration of his date of birth. The misconduct

committed by the petitioner is serious in nature. Petitioner has behaved with fraudulent intention. The explanation given by the petitioner that he has no ulterior motive to give false declaration of his date of birth and giving his date of birth as 5-4-53 is by mistake cannot be countenanced. Due to his misconduct, he is ineligible for appointment in railways. He had the intention to get a job in railway by giving false date of birth as 5-4-53 instead of 5-4-1943. He obtained a false school certificate in order to get benefit of appointment in the railways. The petitioner deliberately, purposefully and with fraudulent intention to get a job in the railways, gave false date of his birth.

8. The propriety of the domestic enquiry is not attacked. The petitioner was given sufficient and reasonable opportunity to defend his case, cross-examine the witnesses examined on the side of the Management and adduce evidence on his side. He was assisted by his defence helper, Jaganathan C. J. The domestic enquiry was conducted fairly and properly. The Enquiry Officer complied with the provisions of law, procedure prescribed by the Act, principles of natural justice, good conscience and equity. The domestic enquiry does not suffer from any infirmity or mistake of impropriety. The domestic enquiry is fair and proper. The Disciplinary Authority after scrutinising the documents, explanation submitted by the petitioner, analysing the evidence and materials placed before him, found the petitioner guilty of the charges levelled against him. The finding of the Enquiry Officer is not perverse. The charges are proved by legal evidence. Prima facie case has been made out. The punishment imposed by the Disciplinary Authority is in commensurate with the charges. The petitioner has contravened Rules 3(i)(i) & (iii) of Railway Service (Conduct rules) 1966. This Tribunal finds no reason or ground to interfere with the punishment awarded by the Disciplinary Authority. There is no mitigating or extenuating circumstances to award lesser punishment. The dismissal of the petitioner from service is just, fair, proper and legal. For the foregoing reasons, this Tribunal comes to the conclusion that the action of the Management of Southern Railway, in removing Sh. P. Ramanaiah, Highly Skilled Grade-I w.e.f. 3-6-87 from service is legal and just. He is not entitled to any relief. The first part of the issue is found in the affirmative. The second part of the issue does not arise for consideration.

In the result, an award is passed rejecting the claims of the petitioner. No costs.

Dated, this the 22nd day of March, 1995.

THIRU K. PONNUSAMY, Industrial Tribunal

WITNESSES EXAMINED

For both sides : None.

DOCUMENTS MARKED

For Workmen :

- Ex. W-1/10-4-78.—Appointment order issued to Thiru P. Ramanaiah, as Khalsi (Xerox copy).
- W-2 11-2-87.—Show Cause notice issued to Thiru P. Ramanaiah (Xerox copy).
- W-3 11-2-87.—Proceedings of the Enquiry Officer, (Xerox copy).
- W-4/11-2-87.—Charge sheet issued to Thiru P. Ramanaiah with enclosures (Xerox copy).
- W-5 29-6-87.—Appeal preferred by Thiru P. Ramanaiah (Xerox copy).
- W-6/15-11-88.—Second appeal preferred by Thiru P. Ramanaiah (Xerox copy).
- W-7 5-1-89.—Reply by the Management to the appeal of Thiru P. Ramanaiah, dated 29-3-87 (Xerox copy).
- W-7/17-11-89.—Revision Petition by Thiru P. Ramanaiah, addressed to the General Manager, Southern Railway, Madras-3 (Xerox copy).
- W-9 28-10-91.—2. A petition filed by Thiru P. Ramanaiah before the Asst. Commissioner of Labour (Central), Madras-6 (Xerox copy).

W-10/24-2-92.—Reply to Ex. W-9 files by the Management before the Asst. Commissioner of Labour (Central), Madras-6 (Xerox copy).

W-11/24-2-92.—Conciliation failure report (Xerox copy).

W-12/13-1-94.—Claim statement filed by Thiru P. Ramaniah, before this Tribunal (Xerox copy).

W-13/7-3-94.—Counter statement filed by the Mgt. before this Tribunal (Xerox copy).

W-14/7-11-88.—Certificate issued by Headmistress of Govt. Aided School, Vaddipalam, Kovur, Nellore District (Xerox copy).

For Management.—Nil.

INDUSTRIAL TRIBUNAL

नई दिल्ली, 2 जून, 1995

का. आ. 1809.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न रेलवे के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/5/95 को प्राप्त हुआ था।

[संख्या एल-41011/10/92-आईआर (बी आई)]
पी. जे. माईकल, डेस्क अधिकारी

New Delhi, the 2nd June, 1995

S.O. 1809.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kota as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Rly. and their workmen, which was received by the Central Government on the 31-5-95.

[No. L-41011/10/92-IR(BI)]
P. J. MICHAEL, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा/राज./
निर्देश प्रकरण क्रमांक : ओ. न्या. (केन्द्रीय)-19/93
दिनांक स्थापना 24/7/93

प्रसंग : भारत सरकार, अम मंत्रालय, नई दिल्ली के आदेशों का
एल.-41011/10/92 दिनांक 21/7/93

औद्योगिक विवाद अधिनियम, 1947

मध्य

डिविजनल मैनेजरी पश्चिम रेलवे कर्मचारी परिषद, कोटा।

—प्रार्थी एनियन

एवं

डिविजनल रेलवे मैनेजर, वेस्टर्न, रेलवे, कोटा डिविजन, कोटा।

—प्रतिपक्षी नियोजक

उपस्थित

श्री आर. के. चाचान,

आर. एच. जे. एम.

प्रार्थी एनियन की ओर से प्रतिनिधि :—श्री ए. डी. ग्रीवर प्रति-
पक्षी नियोजक की ओर से :—श्री सी. एम. शर्मा, विधि सहायक
अधिनियम दिनांक : 20/4/95

अधिनियम

भारत सरकार, अम मंत्रालय, नई दिल्ली द्वारा निम्न
निर्देश औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरांत
“अधिनियम, 1947” में सम्बोधित किया जाएगा) की धारा
10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनियमार्थ
सम्प्रेषित किया गया है :—

“Whether the action of the Railway Administration (DRM, Western Railway, Kota) in not regularising the services of Shri Balchand, AC, Safaiwala at Dhuan Kheri, from the date when his juniors were made regular and denying him seniority accordingly, is justified? If not, what relief the workman concerned is entitled to?”

2. निर्देश न्यायाधिकरण में प्राप्त होने पर दर्ज रजिस्टर
किया गया व पक्षकारों को सूचना जारी की गयी।

2. आज दोनों पक्षों के प्रतिनिधियों उपस्थित हुए।
प्रार्थी प्रतिनिधि द्वारा बतें पेश करने को समय चाहा गया
परन्तु पक्षावली के अवलोकन में स्पष्ट है कि यह निर्देश
दि. 93 से लम्बित है और इतने लम्बे समय तक बतें पेश
नहीं किया गया है जिससे यही प्रकट होता है कि श्रमिक
पक्ष को इस विवाद में कोई रुचि नहीं रही है, अतः प्रकरण
में “विवाद रहित अधिनियम” पारित किया जाता है।

इस अधिनियम को समुचित सरकार की नियमानुसार
प्रकाशनार्थ भिजवाया जाए।

आर. के. चाचान, न्यायाधीश

नई दिल्ली, 2 जून, 1995

का. आ. 1810.—औद्योगिक विवाद अधिनियम, 1947 (1947
का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अलाहाबाद
बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच
अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक
अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय
सरकार को 2-6-95 को प्राप्त हुआ था।

[संख्या एल-12012/67/93-आईआर (बी.-II)]
वी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 2nd June, 1995

S.O. 1810.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workmen, which was received by the Central Government on 2-6-95.

[No. L-12012/67/93-IR(B-II)]
V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, DEOKI
PALACE ROAD, KANPUR

Industrial Dispute No. 71/1993

In the matter of dispute between :

Gopal Krishna Verma,
General Secretary,

All India Allahabad Bank Employees Association,
UP. 184/C-II, Civil Lines, Jail Road,
Bareilly,

AND

Regional Manager,
Allahabad Bank,
G. B Pant Marg,
Narnaul.

AWARD

1. Central Government Ministry of Labour vide its Notification No. L-12012/67/93-I.R.B.II dated 1-9-93, has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of Allahabad Bank in imposing a punishment of stoppage of annual increment without cumulative effect on Sri Shambhu Nath Jhingran is justified? What relief, if any, is Sri Shambhu Nath Jhingran entitled to?

2. In the instant case the reference was received by the Government of India on 6-9-93 whereupon notices to the parties were issued for filing their statement of claim. But despite that till 3-2-95 neither the Union nor the concerned workman filed statement claim. However, on 27-3-95 notice was again sent to the Union in compliance of order dated 3-2-95 fixing 24-3-95. But again none appeared in the case on the date fixed from the side of the Union. Finally case was heard on 26-5-95 when once again none appeared from the side of the Union.

3. Therefore, from the above conduct of the Union it stands established that neither the workman nor the Union is interested in prosecuting the case. As such for want of proof it is held that the action of the management of Allahabad Bank in imposing a punishment of stoppage of annual increment without cumulative effect on Sri Shambhu Nath Jhingran is justified and the concerned workman is entitled to no relief.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 2 जून, 1995

का.शा 1811—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में केन्द्रीय सरकार न्यू बैंक आफ इंडिया (पी.एन.बी.) के प्रबंधन के संवद नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-95 को प्राप्त हुआ था।

[संख्या एल-12012/182/91-आई.आर. (बी-II)]
बी.के. शर्मा, डैस्क अधिकारी

New Delhi, the 2nd June, 1995

S.O. 1811.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of New Bank of India (PNB) and their workmen, which was received by the Central Government on 2-6-95.

[No. I-12012/182/91-IR(B-II)]
V. K. SHARMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No. 30 of 1991

PARTIES :

Employers in relation to the management of New Bank of India.

AND

Their Workmen.

PRESENT :

Mr. Justice K. C. Jagadeb Roy, Presiding Officer.

APPEARANCES :

On behalf of Management—None.

On behalf of Workmen—None.

STATE : West Bengal.

INDUSTRY : Banking.

AWARD

By Order No. L-12012/182/91-IRB.I dated Nil the Central Government in exercise of its powers under Section 10(1)(d) and sub-section (2A) of the Industrial Disputes Act, 1947, has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of New Bank of India in discontinuing the Telex Operation duty with special allowance of Shri Debashish Dutta is justified? If not, to what relief is the workman entitled?"

2. In this case the written statement has been filed by the Union as well as by the management and the workmen also filed the rejoinder to the written statement of the management. The xerox copies of the documents which relied on by the management were kept in the record by order dated 19-11-92. Subsequent to which the workmen also filed xerox copies of the documents they want to relied on by filing the same before this Tribunal on 24-12-1992, which are also kept in the record. The learned Advocate appearing for the management had stated before this Tribunal on 2-3-1993 that the management would lead no evidence in the matter and on the request of the workmen the case was adjourned to 10-5-1993 for evidence on behalf of the workmen. But since then the workmen have led no evidence in the Tribunal in support of their contention which they raised in this reference case, even though several adjournments have been made for evidence on behalf of the workmen. Management has also not come out to prove the documents copies of which they filed in the Tribunal and since 6-2-1995 neither the management nor the workmen have appeared before the Tribunal to take any step in the case.

3. From the conduct of the parties, I come to hold that the workmen have given up and do not press for their demands before this Tribunal. Since it is not possible for any Tribunal to adjudicate upon any demand without evidence on record, I do not find also any ground to hold that the demands were unfairly given up, I pass 'No Dispute' Award in the case.

The reference is accordingly disposed of.

K. C. JAGADEB ROY, Presiding Officer

नई दिल्ली, 2 जून, 1995

का.शा 1812,—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार एनियन बैंक आफ इंडिया के प्रबंधन के संवद नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-95 को प्राप्त हुआ था।

[संख्या एल-12012/434/91-आई.आर. (बी-I)]

बी.के. शर्मा, डैस्क अधिकारी

New Delhi, the 2nd June, 1995

S.O. 1812.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workmen, which was received by the Central Government on 2-6-95.

[No. L-12012/434/88-D-II-A/IR(B-II)]
V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, DEOKI
PALACE ROAD, KANPUR

Industrial Dispute No. 211 of 1989

In the matter of dispute between :

Sri Rakesh Kumar,
C/o V. N. Sekhari,
26/104, Birhana Road,
Kanpur-208001.

AND

Manager,
Union Bank of India,
Harauni Shakha,
Harauni-226001.

AWARD

1. Central Government, Ministry of Labour vide its Notification No. L-12012/434/88-D2(A) dated 1st September, 1989, has referred the following dispute for adjudication to this Tribunal:—

Whether the action of the management of Union Bank of India in terminating the services of Sri Rakesh Kumar and not granting him 1/3 scale wages in terms of clause 9 of 2nd Bi-partite Settlement and also not absorbing him in regular full time vacancy in terms of clause 20.6 of the 1st Bi-partite Settlement is justified? If not, to what relief is the workman concerned entitled?

2. In the instant case after filing the statement of claim and rejoinder, the concerned workman did not turn up for substantiating his claim despite issue of notice at the address available on the record of the file. It therefore appears that the concerned workman is not interested in pressing his claim.

3. Therefore, for the reasons stated above, I hold that the concerned workman is entitled to no relief. It is further held that the action of the management is justified.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 5 जून, 1995

का.भा. 1813.—औद्योगिक विवाद अधिनियम, 1947 (1917 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रीजनल भेरीकल्चरल रिसर्च स्टेशन, मिल्क बोर्ड, देहरादून के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-6-95 को प्राप्त हुआ था।

[संख्या एल-42012/85/88-डी-2(बी)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 5th June, 1995

S.O. 1813.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Regional Sericultural Research Station, Central Silk Board, Dehradun and their workmen, which was received by the Central Government on 5-6-95.

[No. L-42012/85/88-D-2B]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, DEOKI
PALACE ROAD, KANPUR

Industrial Dispute No. 129 of 1989

In the matter of dispute between :

Ravinder Kumar Sharma,
S/o Mukund Lal Sharma,
Village Ogal,
P.O. Climent Town,
Dehradun-248001.

AND

Deputy Director,
Regional Sericultural Research Station,
Central Silk Board, Government of India,
Dehradun-248271.

AWARD

1. Central Government, Ministry of Labour, vide its Notification No. L-42012/85/88-D-2(B) dated 24-5-89 has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of Regional Sericultural Research Station, Central Silk Board, Dehradun in terminating the services of Sri Ravindra Kumar Sharma S/o Sri Mukund Lal Sharma, Casual Labour w.e.f. 7-11-87 is legal and justified? If not, to what relief the workman is entitled to?

2. The concerned workman Ravindra Kumar Sharma in his written statement has alleged that he was appointed as a skilled labour on 12-3-83, in Regional Sericultural Research Station, Dehradun. He continuously worked upto 6-11-87. His services were dispensed with effect from 7-11-87 without paying notice pay and retrenchment compensation. Since he had completed more than 240 days in a calendar year, this termination is violative of section 25F I.D. Act. Giving further details he has alleged that in the year 1983 he worked for 245 days, in the year 1984 he worked for 281 days, in the year 1985 he worked for 360 days, in the year in the year 1986 he worked for 296 days and in the year 1987 he worked for 263 days. It was also alleged that the work which he was doing was of permanent nature and that the work still exists. It was also alleged that after his termination the employer had taken the services of one Mohan Singh. In this way provisions of Section 25H I.D. Act have been violated.

3. The employer in his written statement has denied that the concerned workman was skilled labour. Instead he was unskilled labour and was employed to do seasonal work. It was also alleged that he was a daily rated worker and the work was given to him as and when he came in the office. With effect from 7-11-87, the concerned workman stopped coming. It is wrong to say that the management had denied him work. With regard to the employment of Madan Singh it is alleged that he was already working w.e.f. 11-9-87, hence it is wrong to say that he was employed subsequently. In any case it was alleged that he was gainfully employed else where. It was further alleged that the management is not an industry and as such the concerned workman cannot get any relief under the provisions of Industrial Disputes Act. The right of Central Government to make reference has also been assailed.

4. In his rejoinder, the concerned workman has reiterated the allegations made in the written statement and further has denied the factual pleas raised by the management.

5. From the above pleadings first it is required to be seen if the Central Government is the Appropriate Authority for making reference; secondly that the opposite party management falls within the definition of 'industry'; thirdly whether the concerned workman was skilled or unskilled worker; fourthly whether the concerned workman has completed for more than 240 days in a calendar year during the period of his service and fifthly it is to be seen if the concerned workman had himself stopped coming.

Point No. 1 :

It has been urged by the authorised representative of the concerned workman that Regional Sericultural Research Station is not controlled by Central Government. Its head is a private person, hence Central Government had no jurisdiction to make a reference. I do not find any force in this contention. In this regard it will be relevant to refer to annexure B-7 filed by the management alongwith the affidavit of Dr. J. P. Gaur, which is a memorandum dated 13-10-86. The heading of this letter itself shows that Regional Sericultural Research Station Central Silk Board is a part of Ministry of Textiles, Government of India. From this letter it becomes abundantly clear that it is controlled by Central Government and as such Central Government alone u/s 10(1) of the Industrial Disputes Act, 1947, is competent to make reference. Hence this issue is decided against the management.

Point No. 2 :

It was also contended that Regional Sericultural Research Station, in any case is not an industry. Rather it is sovereign act of the Central Government which is not amendable to industrial law. In this regard I would like to refer the case of Bangalore Water Supply versus A. Rajappa, 1978(36) FLR 268, in which a line of distinction was drawn in respect of function of Central Government. It was clearly held that sovereign function performed by Central Government would not be amendable to industrial law jurisdiction whereas those functions by which Central Government indulged in trading or doing work for profit as well as for rendering services to public at large would fall within the term of industry. Although the management has not explained the nature of work which is carried at Regional Sericultural Research Station Central Silk Board Dehradun but from the above heading as well as from the statement of Dr. J. P. Gaur, it appears that Silk Worming are rear for preparation of silk which an item of trade, hence it cannot be termed as sovereign function the dominant purpose of which is to supply silk for business purpose. Hence keeping in view the observation of the Hon'ble Supreme Court in the above-mentioned case, I have no hesitation in holding that the opposite party management is an industry and as such the present reference is not bad in law.

Point No. 3 :

The concerned workman in his affidavit has sworn that he had worked regularly and has also proved the averments made in the written statement which would show that the concerned workman has completed more than 240 days in each calendar year since 1983 upto 1987. However in his cross-examination he has stated that he was not given any regular appointment. He was getting Rs. 11.50 as his wages. His work was to pluck leaves, to look after fields and looking after silk worms. From the above statement it is abundantly clear that he was not given any specific work instead his nature of work varied from day to day. The management has also filed papers to show that the concerned workman was a candidate for field-cum-lab Assistant. He was issued interview letter but he was not found suitable. In this paper the concerned workman has been shown as casual worker. Further Dr. J. P. Gaur has also stated that the concerned workman was not a regular employee. Instead he was a casual workman. Thus from the above evidence it becomes clear that the concerned workman was not a skilled labour instead he was a casual labour doing different job of work which was assigned to him by the employer.

Point No. 4 :

The concerned workman in his affidavit has sworn that w.e.f. 7-11-87 he was denied work. On the other hand Dr. J. P. Gaur has stated that the concerned workman had himself stayed away from the work. It will be relevant to refer to Ext. W.1 letter dated 9-11-87, which was sent by the

concerned workman to the Chairman of the employer ventilating his grievance regarding his termination. It was sent by registered post. No reply was sent. This silence on the part of employer speaks in favour of the concerned workman. Had there been no truth in this fact, the employer would have refuted it by sending a reply. Apart from this I am of the view that in these days of unemployment it is almost unlikely that the concerned workman himself would have stayed away from the work. Hence I believe the version of the concerned workman and disbelieve the version of the employer and come to the conclusion that the concerned workman's services were orally terminated by the employer w.e.f. 7-11-87.

Point No. 5 :

As has been noticed earlier the concerned workman has alleged in the written statement that he had completed for more than 240 days in a calendar year since 1983 to 1987. It was sworn on affidavit. The employer has filed extracts of muster rolls from November 1986 to November 1987, to show that except in the month of September and November 1987, the concerned workman has worked for 25 or more days in every month. Although Dr. J. P. Gaur has entered into witness box on behalf of management but his evidence is not proper to rebut the version of the concerned workman. The employer ought to have filed the statement of attendance/presence of the concerned workman since 1983 till October 1986 which has not been done. In its absence adverse inference should be drawn against the employer and in favour of the concerned workman. Thus from this evidence I come to the conclusion that the concerned workman has completed for more than 240 days in every calendar year during the course of his employment.

Admittedly no notice and retrenchment compensation has been paid to him, hence his termination is violative of provisions of Section 25F of the Industrial Disputes Act, 1947, and as such is illegal.

I do not find any substance in the objection of the concerned workman that the provisions of section 25H of I.D. Act have been violated as it has been argued by the employer that Madan Singh was not employed subsequently.

It has not been proved that after the termination of services of the concerned workman he has been gainfully employed elsewhere. Thus he will be entitled for back wages.

In the end my award is that the termination of the services of the concerned workman was illegal and as such he is entitled for reinstatement. He will also be entitled for back wages. The workman shall also get Rs. 200 from the employer as cos's of the case.

Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 5 जून, 1995

का.आ.1814-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण, मैं केन्द्रीय सरकार टिप्टी चीफ पोस्ट-मास्टर कानपुर, मुख्य डाकघर कानपुर के प्रबंधन के संबंध निगोशकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचम को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-6-95 को प्राप्त हुआ था।

[संख्या एन-40012/176/93-गार्ड आर (बीवू)]

बी.एम. डेविड, हेड ऑफिसरी

New Delhi, the 5th June, 1995

S.O. 1814.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Deputy Chief Postmaster, Kanpur, Mukhya Dakahar, Kanpur and their workmen, which was received by the Central Government on 5-6-95.

[No. L-40012/176/93-IR(DU)]

B. M. DAVID, Desk, Officer

ANNEXURE

नई दिल्ली, 5 जून, 1995

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT PANDU NAGAR DEOKI
PALACE ROAD KANPUR

Industrial Dispute No. 101 of 1994

In the matter of dispute between:

Jagan Niwas Mishra

S/O Salyain Mishra 108/116, Gandhi Nagar, Kanpur.

AND

Dy. Chief Post Master, Kanpur Mukhya Dakghar, Kanpur.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its notification no. L-4062/17-93 (K.L.D.) dated 6-4-94 has referred the following dispute for adjudication to this Tribunal.—

Kya Prabandhantra Deputy Chief Post Master Kanpur Mukhya Dakghar Kanpur Dwara Karmkar Jagan Niwas Mishra ko dinank 21-8-87 se sewa se nishkasi karne nyoyochit hai? Yadi nahi to sambandhit karmkar kis anutosh ka haqdar hai?

2. The case of the concerned workman is that he was employed by the employer as contingency paid waterman/chockidar on 29-4-85 and worked as such till 20-8-87. On 21-8-87, the employer terminated the services of the concerned workman by showing the letter no. B-11/General/87-88 dated 18-8-87, of the Assistant Post Master, Chief Post Office, Kanpur. The concerned workman further alleges that he had completed more than 240 days work preceding the date of retrenchment of his services. The employer while terminating his services has neither paid notice nor notice pay nor retrenchment compensation. The employer gave fresh appointments after his termination as such provisions of section 25H of I.D. Act have been violated by the employer.

3. In the present case the employer despite availing of sufficient opportunity failed to put its appearance. As such case proceeded ex parte against the employer on 14-2-95. The employer was also debarred from leading his evidence by the Tribunal on 26-4-95 for the reason that the employer again failed to appear in the case.

4. The concerned workman has substantiated his case by filing papers and proving the same. In his statement the concerned workman has stated that he had worked continuously w.e.f. 29th April, 1985 to 20th August, 1987 on the post of Waterman Aur Chowkidar. After 20th August, 1987, his services were terminated without any information and juniors to him were retained in the employment of the employer. He has also disclosed the names of such junior persons as Anil Kumar and Munna. As there is no evidence in rebuttal from the side of the employer, I believe the evidence of the concerned workman.

5. Thus from the above it stands established that the concerned workman worked under the employer for more than 240 days continuously preceding one year from the date of his retrenchment. Admittedly, the employer had not complied with mandatory provisions of sec. 25F, 25G of I.D. Act. As such his termination of services is violative of these provisions. Being so his termination cannot be said as legal one.

6. I therefore, give by award holding that the action of the management in terminating the services of the concerned workman Jagan Niwas Mishra w.e.f. 21-8-87 is not justified. Consequently the concerned workman is entitled for his reinstatement in the service of the employer. He will also be entitled for back wages. The employer is also directed to pay the concerned workman Rs. 200 as costs of the case.

7. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer.

का.आ. 1315 ---औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रिय सरकार में, भारत कोकिंग कॉल लि., सेंद्रा बांसजोरा क्षेत्र का सेंद्रा बांसजोरा कोलियरी के प्रबंधन के संबंध में निर्यातकों और उनके कर्मचारियों के बीच, अनुबंध में निर्यात औद्योगिक विवाद में, केन्द्रिय सरकार औद्योगिक अधिकरण, (स. 1) धनवाद के पंचपट को प्रेषित किया है, जो केन्द्रिय सरकार को 2-6-95 को प्राप्त हुआ था।

[संख्या एल-20012/129/90-आई प्रार (कोल-I)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 5th June, 1995

S.O. 1815.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sendra Bansjora Colliery (Sijua Area) of M/s. BCCL and their workmen, which was received by the Central Government on 2-6-95.

[No. L-20012/129/90-IR (Coal-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1 AT DHANBAD

In the matter of a reference under section 10(1)(d) (2-A) of the
Industrial Disputes Act, 1947

Reference No. 227 of 1990

PARTIES:

Employers in relation to the management of Sendra Bansjora Colliery (Sijua Area) of Messrs Bharat Coking Coal Limited,

AND

Their Workman.

PRESENT:

Shri P. K. Sinha, Presiding Officer.

APPEARANCES:

For the Employers—Shri G. Prasad, Advocate.

For the Workman—Shri B. K. Ghosh, Member, Executive Committee, Janata Mazdoor Sangh.

STATE: Bihar.

INDUSTRY: Coal.

Dated, the 18th May, 1995

AWARD

By Order No. L-20012(129)/90-IR (Coal-I), dated, the 26th September, 1990, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

“Whether the dismissal of Shri Batohi Bhuinya by the management of Sendra-Bansjora Colliery under Sijua Area of M/s. BCCL vide dismissal letter No. SB/PD/89/19/931 dated 31st March, 1989 was justified? If not to what relief the workman is entitled?”

2. The sponsoring union appeared and filed written statement stating therein that the concerned workman Shri Batohi Bhuinya was appointed in March, 1981 as Miner/Loader, after the management was satisfied with his identity. After six years, the management raised the question of his identification and stopped him from work w.e.f. 24th October, 1987, followed by charge-sheet dated 16th December, 1987. A domestic enquiry was held relating to the alleged fake identification after which the workman was dismissed w.e.f. 31st March, 1987.

3. It has been claimed that in the domestic enquiry the management had failed to prove the charge of misconduct. A prayer has been made to re-instate the workman into the service with full back wages.

4. The management filed its written statement alleging that it was one Shri Pradeshi Mourya son of Shri Ram Basan Mourya, who got employed in March, 1981 representing himself to be Batohi Bhuinya. That workman filed his service particulars showing to himself to be son of Shri Tetar Bhuinya, village-Moura, P.O. Gidhur, District-Munger. The management later, came to know of this fact and had an enquiry made through the Officer-in-charge of Loyabad Police Station, who informed that there was no person of the name of Batohi Bhuinya at village-Moura, aforesaid.

5. The police also found that it was one Pradeshi Mourya son of Ram Basan Mourya of village-Sakra, District Balia, U.P. who was impersonating as Batohi Bhuinya.

6. The management by letter dated 10th September, 1987 directed the workman to produce identification from the concerned B.D.O. which workman did not do. By letter dated 24th October, 1987 he was given further opportunity to prove his identification and was stopped from duty.

7. Thereafter charge-sheet dated 16th December, 1987 was issued to him to which he did not send any reply. Thereafter, a domestic enquiry was ordered which was held properly in which charge of impersonation was established and, consequent thereto, workman was dismissed from service w.e.f. 31st March, 1989. A prayer has been made to hold that the action of the management was justified.

8. The points for consideration are, firstly, whether the management by evidence produced before the enquiry officer had proved the charge of impersonation against the concerned workman and, if so, secondly, whether the punishment of dismissal was justified.

9. Before taking up the first issue, it may be mentioned that it will appear from the order dated 28th November, 1994 that in course of hearing on preliminary issue about the fairness of enquiry, the sponsoring union contended that the enquiry was fair and proper. On prayer of both the sides, thereafter, the reference was placed for hearing of argument on merit.

10. First of all I will discuss the charge-sheet dated 16th December, 1987 which is Ext. M-1. Though it appears to be a letter, Shri G. Prasad, the learned counsel for the management, informed the Tribunal that this letter was treated as charge sheet. According to the Ext. M-1, a letter was sent to the four workmen including the concerned workman, intimating therein that though letter dated 10th September, 1987 and 24th October 1987, workman was asked to submit in the office his identification duly attested by B.D.O. and District Officer, failing which it was to be presumed that he was not a genuine person. The workman was given time of seven days to do so and was informed that should he fail to do that, he would be proceeded against under clause 17 of the Standing Orders.

11. If this could be considered the charge sheet, even then it nowhere mentioned that the concerned workman was not actually Batohi Bhuinya but was rather one Pradeshi Mourya son of Ram Basan Bhuinya. Therefore the charge sheet is vague.

12. Now coming to the evidence adduced before the Enquiry Officer (in Ext. M-5) it will appear that the enquiry officer also explained the allegation as mentioned in Ext. M-1, to which the workman claimed that the allegation was wrong and he was Batohi Bhuinya.

13. It will appear that by way of evidence the enquiry officer recorded only the statement of Shri R. N. Panda, the management's representative. Shri Panda told the enquiry officer that a Criminal case was instituted against some persons and the police had investigated about the name and address of the concerned workman as given in Form B Register. Shri Panda further told that the Officer-in-charge of Loyabad Police Station told that the concerned workman was not Batohi Bhuinya, but was Pradeshi Mourya son of Ram Basan Mourya of district Balia. Having said that Shri Panda claimed that his statement proved that the Batohi Bhuinya was a fake person.

14. It appears that thereafter, the enquiry officer recorded the statement of Batohi Bhuinya who stuck to the point that he was real Batohi Bhuinya of village-Mourya, District Munger and was son of Tetar Bhuinya. He also deposited his caste certificate.

15. In cross-examination this witness said that at the time of entering into the service he had filed identification by the B.D.O. of Baghmara and of the concerned Mukhiya. He was asked as to why he had filed certificate from the authorities of this place when he resided at Munger. The workman answered that earlier he was living at Munger but later he had started living at Baghmara hence he had filed certificate of that place.

16. This is all the evidence on the record. In the original file of the domestic enquiry, which was filed later after the photo copies of those documents were marked Exts., a certificate given by the B.D.O. of Laxmipur, in photo copy may be found on which his photo was attached and in which the B.D.O. had certified, on the basis of the report of the Mukhiya of Moura Gram Panchayat that Shri Batohi Bhuinya son of Tetar Bhuinya was a resident of village-Mouri, District Munger.

17. Therefore, all that is on the record to prove the charge, if the materials in Ext. M-1 at all constitute a charge, is the assertion of the management's representative that the workman was a fake man because a police officer had told the management so. The management did not even care to examine the concerned police officer as witness, nor did it care to bring on the record the report of the police officer. However, even if the report of the police officer had been filed, without examining the police officer thereby denying opportunity to the concerned workman to cross-examine that police officer, the report would not have served any purpose.

18. On the other hand, on the record there is photocopy of a certificate granted by the B.D.O., with photograph of the workman, and the management has nowhere denied that this certificate was not genuine or that the photograph was not that of the concerned workman.

19. It is regrettable that on such flimsy, almost non-existent evidence, not only the Enquiry Officer, held the vague charge as having been proved but even the superior authorities who considered that report, came to the same conclusion. Obviously, neither the Enquiry Officer nor the superior officers appear to have applied their mind to the evidence on the record. This has resulted in quite unjustifiable dismissal of the concerned workman from service which must have brought about a lot of miseries upon the concerned workman for no fault of his. Moreover, nothing has been brought on record to show, even presuming that the Management's allegation was true, that by such change in name, father's name and address, the concerned workman had to gain anything. In other words, it has not been shown that there was any necessity for the concerned workman to assume a new identity for getting into the service.

20. Therefore, I hold that the management has miserably failed to bring home any charge of misconduct against the concerned workman, in the domestic enquiry.

21. This makes the concerned workman entitled to re-instatement, as well all the back wages and cost.

22. Following, therefore is the Award:

The dismissal of Shri Batohi Bhuinya by the management of Sendra Bansjora Colliery by the dismissal letter dated 31st March 1989 was unjustified. The management is hereby directed to re-instate the concerned workman Shri Batohi Bhuinya to his post within one month of this Award becoming enforceable. The management is also directed to pay to the concerned workman, within a month of his re-instatement, all the back wages falling which the back wages would be payable to the concerned workman with interest @ 12 per cent per annum to be counted with effect from the date by which the amount has been made payable by this Award, till the amount of back wages are actually paid. The management shall also pay a sum of Rs. 500 (Rupees Five hundred) as cost.

P. K. SINHA, Presiding Officer

नई दिल्ली, 5 जून, 1995

का.प्र. 1816.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बाराणी रिफाइनरी, इण्डियन आयल कॉर्पोरेशन लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-95 को प्राप्त हुआ था।

[संख्या एल-30012/6/90-आई आर (विविध)/आई आर (कोल-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 5th June, 1995

S.O. 1816.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. I), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Barauni Refinery, Indian Oil Corporation Ltd. and their workmen, which was received by the Central Government on 2nd June, 1995.

[No. I-30012/6/90-IR (Misc.)/IR (Coal-I)]

BRAJ MOHAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) (2-A) of the Industrial Disputes Act, 1947.

Reference No. 126 of 1990

PARTIES:

Employers in relation to the management of Indian Oil Corporation Ltd., Barauni Refinery.

AND

Their Workmen

PRESENT:

Shri P. K. Sinha,
Presiding Officer.

APPEARANCES:

For the Employers: Shri S. K. Mishra, Sr. Personnel & Administrative Officer, and Shri V. Narain, Personnel & Administrative Officer.

For the Workmen: Shri N. M. Prasad, General Secretary.

State : Bihar.

Industry : Oil.

Dated, the 15th May, 1995

AWARD

By Order No. L-30012/6/90-IR (Misc.) dated 24-5-1990 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Barauni Refinery, IOC, Begusarai in superseding the seniority promotion of Sri Upendra Prasad, Store Keeper is justified. If not, to what relief is the workman entitled?"

2. The sponsoring Union appeared and filed written statement stating therein that the concerned workman, Upendra Prasad had been working with the management from 24-4-1963 as Time Keeper in the Construction set-up and from 27-2-1980, in the permanent set-up.

3. It has been mentioned that with the implementation of the recommendations of the Administrative Staff College of India, Hyderabad (hereinafter referred to as Staff College) the concerned workman was declared surplus vide management's letter dated 6-9-85 alongwith other workmen. Thereafter Sri Prasad was re-deployed as Purchase Assistant with effect from 28-11-85 and was posted in the Material Department vide letter dated 28-11-85 in which it was mentioned that his seniority in the re-deployed category would be below the existing workmen working in the same category.

4. It has been stated that, likewise, Prahlad Singh, P. N. Sharma and Mahesh Ram, Assistants, who also were declared surplus, were re-deployed as Purchase Assistants in Materials (Purchase) Department with effect from 6-9-85 and 28-11-85 respectively. Out of them Mahesh Ram was re-designated as Store Keeper and was deployed in the Materials (Stores) Department with effect from 23-11-85. This Mahesh Ram was again re-designated as Purchase Assistant and posted in Materials (Purchase) Department with effect from 23-12-85.

5. It has further been averred that the management, on its own, again re-designated the concerned workman as Store Keeper with effect from 23-12-85 and posted him in Materials (Stores) Department vice Mahesh Ram.

6. It has been alleged that Prahlad Singh, P. N. Sharma and Mahesh Ram, all Purchase Assistants, have been given seniority with effect from 2-9-85 though they were re-designated/re-employed on 6-9-85, 28-11-85 and 23-12-85 respectively.

7. It has further been claimed that the seniority of the concerned workman in the category of the Store Keeper of Materials (Stores) Department was placed by the management below 5 workmen who were to be promoted to the post of Store Keeper from their existing posts of Assistant Store Keeper. This way the management made Upendra Prasad, on his re-deployment, junior to Bhore Lal Singh and four others, who have been named in para 8 of the written statement, who were still working as Asstt. Store Keepers when Upendra Prasad was posted as Store Keeper.

8. However, it may be mentioned that whereas in para 8 of the written statement only five Asstt. Store Keepers have been named, in para 9 another name, i.e. Abdul Samad, Asstt. Store Keeper has also been added. It has been mentioned that these six were promoted as Store Keeper during 1985-87 and were further promoted to the post of Senior Store Keeper/Stock Verifier during 1987-90 superseding Sri Prasad.

9. A prayer to restore the seniority of the workman from 23-11-85, if not, then from 2-9-85, and to place him above his aforesaid juniors by awarding promotion to him with retrospective effect, has been made.

10. The management also appeared and filed its written statement in which besides technical objections, it is averred that the concerned workman is bound by a conciliation settlement dated 14-6-79 (Ext. M-1) entered into between the management and the recognised Union, namely, Barauni Telchodhak Mazdoor Union according to which, in Clause III, it was agreed for study to be conducted by the Staff College for determining the manpower requirements, promotional avenues and other related issues. It was also agreed upon in Ext. M-1 (sub-clause 5 of clause-III) that the implementation of the recommendations of the Staff College would be done in consultation with the recognised Union. The recommendations of the Staff College were implemented with effect from 6-9-85 in consultation with the recognised Union.

11. Here it may be mentioned that in this matter the dispute was raised by another Union, said to be unrecognised Union namely, Barauni Refinery Pragatisheel Shramik Parishad.

12. It has been averred that as a result of aforesaid implementation some workmen including Upendra Prasad were declared surplus, but as per settlement surplus workers were absorbed by adjusting in different departments in consultation with the recognised Union. Therefore, Sri Prasad was re-deployed as Purchase Assistant with effect from 28-11-1985 to which he made no objection. After that also various consultations took place during September to December, 1985 to sort out the effect of such re-deployments and it was agreed upon between the management and the recognised Union that Upendra Prasad should be re-deployed as Storekeeper. It was

also agreed upon to reckon seniority of the concerned workman in the category of Storekeeper below those five workmen who were to be promoted from category of Asstt. Storekeeper to the category of Storekeeper. The management has asserted that this was done with a view to protect the interest of the workmen who were working in the Materials Store Cadre from very beginning. This way the concerned workman was re-designated as Storekeeper and was posted as such with effect from 23-12-85 and, as per consent of the Union, was placed below five Assistant Storekeepers who were to be promoted to the post of Storekeepers. The seniority list was prepared accordingly.

13. It has been claimed that re-deployment of the concerned workman from Purchase Department to the Stores Department was also done with a view to protect his 10 per cent Special Allowance which he was drawing when he was declared surplus. It has been argued had he been adjusted as Purchase Assistant he would have lost this allowance to which the Union and the concerned workman were not agreeable. It has been claimed that this also was the reason that the concerned workman had accepted his re-deployment as Storekeeper knowing full well that in seniority he would be placed below five Assistant Storekeepers who were assured that induction of an outsider would not in any way danger their seniority. This way, it has been claimed, it is not a case of supersession of the concerned workman by his juniors.

14. The management has requested that the concerned workman and his Union should be estopped from raising a dispute which was implemented with their full knowledge and their consent. A prayer has been made to reject the claim of the sponsoring Union.

15. The management also submitted a separate rejoinder to the written statement of the sponsoring Union in which it has reiterated the facts already mentioned in their written statement. The sponsoring Union also filed its rejoinder to the written statement of the management in which it struck to its case revealed earlier.

16. Both sides have filed a number of documents as well as a larger number of decisions. But the issue involved lies within a narrow compass hence I will discuss the relevant materials on the record for coming to a decision.

17. The reference relates to the action of the management in superseding the seniority/promotion of Upendra Prasad. If the workman was bound by the consent of the recognised Union as displayed in Ext. M-5 in which, as the management claims, the Union had agreed to place the concerned workman in Stores Department on re-deployment below five Assistant Storekeepers who were yet to be promoted as Storekeepers, then the sponsoring Union hardly has any case.

18. The issues for decision in deciding the present reference are as follows :

- (i)(a) Whether the concerned workman was bound by the consent of recognised Union given to the management, as recorded in Ext. M-5 in which it was agreed upon to place his seniority below five Asstt. Storekeepers who were yet to be promoted on the date he was deployed as Storekeeper;
- (i)(b) Whether the document in Ext. M-5 can be relied upon as a valid document binding upon the concerned workman;
- (ii) If the answer of the aforesaid issues go in favour of the sponsoring Union then whether the workman is entitled to any relief and, if so, to what relief.

19. I will first take up the issue Nos. (i)(a) and (i)(b). Issue No. (i)(b) I have formulated in view of the argument made rather strongly, that by look of it Ext. M-5 would appear not to be a genuine document.

20. Ext. M-1 is a settlement arrived at between the management and the workmen represented by the recognised Union aforesaid, in course of conciliation proceeding held on 14-6-79 before the Joint Labour Commissioner and the Conciliation Officer Government of Bihar, Patna. According to Clause (III) of this settlement, it was agreed upon for a study to be conducted by the Staff College for determining the manpower requirements, promotional avenues and other related

matters. Sub-clause (4) provided that the recommendations of the Staff College on the terms of reference should be final and binding on the parties to the agreement. Sub-clause (5) provided that the implementation of the recommendations shall be done in consultation with the Union. This was duly signed as provided under law. As a matter of fact the sponsoring Union has not challenged the validity of this document.

21. Ext. M-2 (=Ext. W-1) is a copy of Office Order dated 6-9-85 in which it was ordered that in accordance with the recommendations of the Staff College and in pursuance of the conciliation settlement dated 14-6-79, Upendra Prasad, Timekeeper was declared surplus and was so informed. He was released from his department with immediate effect and was directed to report to the Personnel and Administrative Officer.

22. Ext. M-3 (=Ext. W-2) is another Office Order declaring that Upendra Prasad was re-designated as Purchase Assistant with immediate effect and was posted in the Materials Department on his re-deployment. It was made clear that his scale of pay/grade would remain unchanged. This letter also provided as follows :

"His seniority in redeployed category would be below the existing workmen working in the same category there....."

Other terms and conditions of his service will remain unchanged."

23. Then there is another Office Order dated 23-12-85 (Ext. W-3) through which Upendra Prasad, then Purchase Assistant was redesignated as Storekeeper and was posted in the Materials (Stores) Department. This letter categorically stated in the end that the other terms and conditions will remain unchanged.

24. Thereafter I will come to the crucial document in this regard which is Ext. M-5 (=Ext. W-5). The heading of this document is as follows :

"Record note of discussions between management of Barauni Refinery and Barauni Telsodhak Mazdoor Union held in the months of September/December, 1985." The relevant portion of this agreement is at page 2 under the heading of 'Materials (Stores)'. Clause (iv) under this heading states as follows :

"Pursuant to the promotion, two Assistants who are surplus shall be redeployed as Store-Keeper."

25. As for their seniority in the category of Store-Keeper, in order to protect the interest of workmen already working in Materials (Stores) cadre it was decided to reckon the seniority of these two redeployed workmen below five workmen who would be promoted from Assistant Store Keeper Category to Store Keeper.

26. Though in the beginning this document names four personnels present on behalf of the management and five officials present on behalf of the Union, these persons do not appear to have signed over this document.

27. MW-1, S. K. Mishra who was working in the Personnel Department could not say in his cross-examination as to whose initial was present on Ext. M-5. Only one person appears to have initialled it, rather on every page, on 25-6-86. In this regard the evidence of MW-2, Vijay Kant Jha, Deputy General Secretary of the recognised Union is important. He answered in cross-examination that he could not say as to who actually had drafted the record notes of discussions is Ext. M-5. But he claimed that this was shown to the Union by the Chief Personnel Manager. But he could not say the date on which it was so shown.

28. It may be mentioned that in his examination-in-chief he had testified to the settlement in Ext. M-1 and had also said that while implementing the recommendations of the Staff College it was settled in consultation with the Union that the concerned workman and another workman would be placed in the seniority list below five Asstt. Store Keepers. This discussion was re affected in the record note of discussion.

29. Coming back to his cross-examination, this witness testified that the present dispute was not raised by his Union, nor the concerned workman was ever a member of his Union.

30. WW-1 is Upendra Prasad himself, the concerned workman. He stated that for the second redeployment he was neither consulted nor his consent was taken. He submitted that when the seniority list was issued he was shown below the Asstt. Store Keepers. He claimed that he never was a member of the recognised Union, but the second redeployment was done by the management in collusion with the recognised Union.

31. WW-2 is Mahesh Ram another redeployed workman who said that he was redeployed as Purchase Assistant and was given seniority with effect from 2-9-85.

32. Obviously this Ext. M-5 is not a thoroughly reliable document. Firstly this appears to be a recorded note of discussions held between the recognised Union and the management between September to December, 1985, i.e. within a period of four months. This itself shows that more than one meetings were held. It is very strange that when the management and the recognised Union were taking such important decisions, they thought it fit to let their decisions recorded at a later date. In comparing different meetings held between the two. As a matter of fact whoever has signed over it, obviously someone from the side of the management, has done so on 25-6-86, i.e. about six months after what could be said as the last meeting between the two parties. It is very difficult to place reliance on such a document.

33. I am not going into the objections raised by the sponsoring Union that as per provision of Sec. 2(p) and 18 of the Industrial Disputes Act and as per Rule 53 of the Industrial Disputes (Central) Rules, 1957, the document in Ext. M-5 could not be said to be a document of legal settlement. However, I will mention here that it was placed before me by the management in course of argument that the documents in Ext. M-5 was not a separate settlement but was a note of consultation for the implementation of the recommendations of the Staff College as provided in Sub-Clause 5 of Clause-III of Ext. M-1. Even if it be so, no such important document deciding fate and career of a workman could be prepared in such haphazard and careless manner.

34. Moreover, it has been argued on behalf of the sponsoring Union that in Clause-IV under the heading "Materials (Stores)" in Ext. M-5 this refers to two Assistants to be redeployed as Store-keepers below those who were yet to be promoted as Store Keeper. It has been pointed out that the present workman at the time of his such redeployment, Upendra Prasad, was not working as Assistant but as a Purchase Assistant which are two different posts. It was argued that this being so, the reference of "two Assistants" in Ext. M-5 cannot be said to be definitely referring to the concerned workman. This cannot be said to be a specious argument. Therefore, it is difficult to place reliance on Ext. M-5.

35. It would be more so because, as claimed by the management, this was a decision taken by the management in consultation with the recognised Union. Not only that the concerned workman has claimed that he was never a member of the recognised Union, but M.W. 2 has also admitted that the concerned workman never was a member of the recognised Union. The agreement between the management and the Union in Ext. M-5 aforesaid related to two workmen and it effected their personal career. It was not that the aforesaid decision was taken effecting the general workmen working in that company. Therefore, the recognised Union was not in a position to agree, to the detriment of concerned workmen, without even consulting him and without giving him any opportunity to place his side, who evidently was not even a member of that Union.

36. Coming back to Ext. W-2 already quoted, it was ordered that on the concerned workman's redeployment in the Materials Department as a Purchase Assistant, his seniority in the redeployed category would be below the existing workmen working in the same category there.

37. Office Order in Ext. W-3, which also relates to the Office Order in Ext. W-2, orders that the concerned workman, that Purchase Assistant, was redesignated as Store Keeper and was posted in Materials (Stores) Department. It was clearly mentioned in that letter that other terms and conditions would remain unchanged. Therefore, this shows that the condition in Ext. W-2 that on his redeployment the workman would be placed below only those existing workmen working in the

same category, stood. Therefore, this was a clear understanding given to the concerned workman that on his first or second redeployment, he would be placed only below those workmen working in the same category. Therefore he could have been placed only below the Store Keepers on his second redeployment as per the aforesaid Office Order. Therefore, it was not proper for the management to act upon the alleged agreement with the recognised Union relating to a non-member, which adversely effected the seniority of the concerned workman against the terms of the Office Order aforesaid.

38. Therefore, in view of the aforesaid facts I do not find that the terms in Ext. M-5 were binding upon the concerned workman or that the exactitude in correctness of the note of discussions in Ext. M-5 could be relied upon for the reasons already discussed. The Issue nos. 1(a) and 1(b) are answered accordingly.

39. Now coming to the relief to be given to the concerned workman I find that there are impediments in giving any relief. As in every Organisation promotions are made against existing vacancies. Rightly or wrongly five Asstt. Store Keepers on their subsequent promotion to the post of Store Keeper have already been shown senior to the concerned workman. As per claim of the sponsoring Union, reiterated during argument also, those five persons have further been promoted from the post of Store Keepers. If I direct the management to restore seniority to the concerned workman above those five workmen, it would amount to passing of an order detrimental to the interest of those five workmen, behind their back. This proceeding was started long back and evidence also had commenced before I took charge of this file. In such circumstance I find it not possible to give relief to the concerned workman, directing the management to treat him senior to the aforesaid five other workmen, with retrospective effect. This is also so because there is nothing on the record to show that the concerned workman could be accommodated above those five other concerned workmen atleast in the matter of further promotion in view of the availability of a vacancy there with retrospective effect.

40. This situation would not have arisen had the sponsoring Union taken up this matter immediately on such supersession of the concerned workman. The sponsoring Union cannot say that it was not in know of the supersession of the concerned workman from before. While MW-2 was being examined, he submitted that during the discussion covered by Ext. M-5 Sri N. M. Prasad, who has been representing the concerned workman was then Dy. General Secretary of the recognised Union and when the discussions were held, he also had represented the recognised Union and had consented to the settlement. This has not been challenged in his cross-examination. The name of Sri N. M. Prasad also appears as representative of the recognised Union on Ext. M-5. Even WW-1, the concerned workman himself, has admitted in cross-examination that Sri N. M. Prasad, the then Dy. General Secretary, was present in the meeting though he said that he could not say that Sri N. M. Prasad named in Ext. M-5 was the same person who was conducting his case in the Tribunal and who had examined him in-chief. In the deposition I have noted that on being asked by the Tribunal Sri N. M. Prasad who was conducting the case on behalf of the sponsoring Union, said that during that period he was Dy. General Secretary of the recognised Union. Obviously Sri N. M. Prasad subsequently parted his ways with the recognised Union and became the office bearer in the sponsoring Union.

41. There is nothing in the evidence of WW-1, the concerned workman, that he did not know about his loss of seniority in the year 1985 itself, when the discussions in Ext. M-5 had taken place. Therefore obviously a decision about effecting his seniority was taken in the year 1985 and the sponsoring Union has brought nothing on the record to show that this fact was not within the knowledge of the workman or of the sponsoring Union in the year 1985.

42. Ext. M-4 is the letter of the management dated 19-10-89, addressed to the Asstt. Labour Commissioner (C), Patna which was about conciliation proceeding held on 28-9-86 and which also referred to their letter dated 29-6-89 in which some preliminary objection was raised. From the order of reference, where it was ordered to send copies to the different officials, the file number of the conciliation file shows that the dispute was raised in the year 1989. It was agreed on behalf

of the sponsoring Union in course of argument that the dispute was raised in the year 1989. The sponsoring Union in its written statement in para 9 has mentioned that those five Assistant Store Keepers who were promoted as Store Keepers during 1985-87, were further promoted as Senior Store Keepers during the period 1987-90. This is to say that one or more of those five workmen superseding Upendra Prasad were promoted to still higher post in the year 1987. Still the sponsoring Union awaited till the year 1989 to raise the dispute. The concerned workman or the sponsoring Union should have understood that this was a claim of supersession in which the officials superseding were bound to get further promotion on the basis of their seniority, hence any delay in raising the dispute was not only to create complication but also was bound to make the dispute overstate in the circumstances of the case.

43. In this regard decision by Hon'ble High Court at Patna reported in 1994 B.B.C.J. at 498 which related to C.W.I.C. No. 1250/88 (R) (between Secretary, Barauni Telsodhak Mazdoor Union Vs. Presiding Officer, Central Govt. Industrial Tribunal No. 2 and others and C.W.I.C. No. 1760/88 (R) between M/s. Indian Oil Corporation Ltd. Vs. Union of India and others) his Lordship has been pleased to discuss a number of leading decisions, including those of Hon'ble Supreme Court, on the point of staleness of reference, and observed as follows :

" From the conspectus of decision the law appear to be well settled that whereas no period of limitation was prescribed in respect of industrial claim, the Industrial Tribunal or Labour Court should discourage over-stale claim unless satisfactory explanation thereof was shown."

44. No material whatsoever has been brought on the record to explain this unusual delay in raising the dispute. This way I find that the dispute has become overstate to grant any relief to the concerned workman, particularly in absence of the persons who could be adversely effected in case an award is given in favour of the concerned workman.

45. However, this Tribunal's inability in granting the relief to the concerned workman for the aforesaid two reasons may not stay the hands of the management in providing any sort of relief that they may provide to the concerned workman in accordance with rules in view of the observation of this Tribunal while answering issue No. 1. However, this is a point for consideration of the management since the concerned workman is an employee of the company. I make it clear that this is not a directive, nor a part of the award.

46. In view of the aforesaid discussions the following is the award :—

The action of the management in superseding the seniority of Upendra Prasad was not justified. However, in view of the fact that the claim of the sponsoring Union has become over-stale as also in view of the fact that the seniority of other workmen could not be adversely effected behind their back, I do not find that the concerned workman is entitled to or can be given any relief.

Under the circumstances of the case there would be no order as to the cost.

P. K. SINHA, Presiding Officer

नई दिल्ली, 5 जून, 1995

का.प्र. 1817—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में सेक्टर कोल फील्ड्स लिमि. की मिरका कोलियरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1) घनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-95 को प्राप्त हुआ था।

[संख्या एल-20012/112/91-घाई धार (कोल-1)]

ब्राज मोहन, डेस्क अधिकारी

New Delhi, the 5th June, 1995

S.O. 1817.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sirka Colliery of M/s. C.C.L. and their workmen, which was received by the Central Government on 2-6-95

[No. I-20012/112/91-IR(Coal-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d)(2-A) of the Industrial Disputes Act, 1947

Reference No. 113 of 1991

PARTIES :

Employers in relation to the management of Sirka Colliery of M/s. Central Coalfields Ltd.

AND

Their Workmen

PRESENT :

Shri P. K. Sinha, Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate.

For the Workman : Shri D. Mukherjee, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 22nd May, 1995

AWARD

By Order No. I-20012/112/91-I.R.(Coal-I) dated 24-10-91 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Sirka Colliery Argada Area of C.C. Ltd. P.O. Argada, District Hazaribagh by not reinstating to Shri Narendra Singh, Asstt. Store Keeper is justified? If not, to what relief the workman is entitled?"

2. The workman, Narendra Singh, who had raised the dispute appeared and a written statement was filed by him stating therein that on receipt of the charge-sheet alleging that while going to Ranchi on 29-9-87 by a truck he had taken away three spares of dozer without any requisition with an intention to commit theft, fraud and dishonesty, he had filed his explanation denying allegation and stating that since the requisition for articles mentioned in the charge-sheet was submitted to the Senior Store-keeper by one Ratneshwar Jha, Fitter Grade-I, who himself had taken away only the cross-bearing out of the requisitioned articles leaving behind other articles in the stores with the idea that the delivery would be taken when vehicle for carrying the same would be arranged. It has been submitted in the written statement that Sri Jha had requested the concerned workman for collecting the articles from the stores and to arrange sending the same to Sri Jha. Accordingly, on 29-9-87 the workman had collected those materials and had sent the same to Sri Jha which were, later, received back in the stores.

3. It has been claimed in the written statement that the concerned workman had no ulterior motive in collecting the articles for which requisition had already been submitted by Sri Jha and which were sent to him

4. It has been claimed that a perfunctory enquiry was held and the workman was dismissed.

5. The workman has also attacked the propriety of the domestic enquiry which presently I am not taking into account because a preliminary issue about propriety of the domestic enquiry was raised for which evidence was adduced, and by order dated 7-2-95, the domestic enquiry was held to be fair and proper.

6. It has been argued in the written statement that the allegation in the charge-sheet was not covered under clause 13(1)(a) of the Standing Orders. It has also been stated that the same Enquiry Officer had also held the enquiry against the workman Ratneshwar Jha aforesaid on the same charge of theft for the same materials and in that enquiry also the same Enquiry Officer had held the charge to have been proved, also holding that Ratneshwar Jha had returned those articles to the stores on 30-9-87. Prayer has been made to order reinstatement of the workman with back wages.

7. The management also appeared and submitted, besides preliminary objections, that the concerned workman was working in Sirka Colliery as Asstt. Store-Keeper and was issued charge-sheet dated 4-10-87 for theft in articles. In the charge-sheet it was alleged that while he was proceeding to Ranchi on 29-9-87 on a truck bearing No. BHW 2006 he took away three spares, namely, one bearing, one cross-bearing and one regulator all of a dozer in a bag without producing any requisition in the store, with the intention of committing theft.

8. It has been alleged that since the reply of the workman was not satisfactory an enquiry was ordered against him which was conducted properly and the Enquiry Officer, in his report, found the concerned workman guilty of the charges framed against him. That report was considered and, considering the gravity of offence, the workman was dismissed from service by order dated 22-4-89.

9. Parawise reply to the written statement of the concerned workman has also been given, denying the allegations. A prayer has been made to answer the Reference in favour of the management.

10. The twin points for consideration in this reference are, firstly, whether or not the action of the management in not reinstating Narendra Singh on the basis of the allegation in the chargesheet, was justified and whether the management by its evidence had proved the charge against the concerned workman in the domestic enquiry. The second point is, if the first point is answered in favour of the workman, to what relief he is entitled.

11. The main body of the charge-sheet against the workman as shown in Ext. M-5 runs as follows:

"On 29-9-87 when you were going to Ranchi by Truck No. BHR 2006 you took away three spares (one bearing, one cross bearing and one regulator) all of dozed in a bag by the truck without producing any requisition in the store with an intention of theft, fraud and dishonesty. This you did in front of Sr. Store Keeper and Store Tyndal."

12. The concerned workman submitted his reply (Ext. M-6) dated 6-10-87 denying therein the charge as levelled against him and claiming that the requisition for all the articles mentioned in the charge-sheet was submitted to the Senior Store-Keeper by Ratneshwar Jha, Fitter Gr. I who only took away the cross-bearing leaving behind other articles with idea to take those after arranging a vehicle and also requested the concerned workman to arrange to collect the articles from the store. The workman claimed that on 29-9-87 he collected the materials and sent the same to Sri Jha which were, subsequently, sent back in the stores. He claimed that he had no ulterior motive in collecting the articles in presence of responsible officer and staff.

13. Ext. M-3 is requisition issue voucher for one number each of cross assemble, regulator, bearing and four numbers of cross-bearing, which is dated 20-9-87. From this voucher it will appear that two cross-bearing, one regulator and one bearing were issued from the stores on the same day and the Issuing Authority as well the receiver had signed over the same. However there is another requisition issue voucher in Ext. M-2 but that relates to different number of rings numbering 28 which are not shown to be the subjectmatter of this dispute. However, as received the same person has

signed over it, who had signed in Ext. M-3. This is dated 19-9-87 but issue was authorised on 20-9-87. Obviously these items could have been received and taken away by the receiver, claimed to be Ratneshwar Jha, not before 20-9-87. Ext. M-1 is the issue receipt authorising taking away of articles which is dated 20-9-87. But this relates to 28 numbers of rings as issued under Ext. M-2, and one number of cross-bearing, apparently issued through Ext. M-3. It will appear from these documents that out of four numbers of items in Ext. M-3 only one cross-bearing was taken out on 20-9-87 as Ext. M-1 does not show the taking out of one more cross-bearing, one regulator and one bearing on that day which appears to be the articles mentioned in the charge-sheet of the proceedee.

14. In course of arguments it has been pointed out to me that a look at Ext. M-3 would show that in this requisition slip which is the photo copy, item Nos. 3 and 4 (one regulator and one bearing) have been added later. However, the management should better have placed in the Tribunal the original of the requisition slip which should be available in its office. Moreover, even in item No. 2, two cross-bearing are shown to have been issued whereas Ext. M-1 shows taking out of the store of only cross-bearing. This cross-bearing in Ext. M-1 is numbered as T.V. 1499. The same number is mentioned against item No. 2 in Ext. M-3, but still in a different carbon. It has not been claimed before me that there was any subsequent interpolation in this requisition slip after materials were issued. As a matter of fact the No. T.V. 1499 was written against item No. 1 in Ext. M-3 which was cross assemble, but that appears to have been penned through in the original, and the same number was written against item No. 2, but obviously in a different carbon. This is only to show that it was not uncommon to insert same figure in the requisition slip even later.

15. I would now deal with the evidence of the witnesses produced before the Enquiry Officer. The first witness was Rana Sumer Singh, Sr. Store Keeper. He said that when a truck was going to Ranchi on 29-9-87 he had asked the proceedee to go to Ranchi because authorisation was in his name. The witness also asked Narendra Singh to issue two hose pipes which Narendra Singh did not sent the same to Mandal Babu for issuing gate pass. Thereafter he saw that one Birju was putting some articles in a gunny bag in the truck. On the enquiry by the witness, Narendra Singh told him that this was material for excavation.

16. Here it may be mentioned that it is admitted that the articles in Exts. M-2 and M-3 were issued for excavation.

17. Coming back to the evidence of Sr. Store Keeper he said that the truck thereafter left for Ranchi. He further stated that when Ram Naresh Ram, Incharge of Spares Section, came there at about 12.30 P.M., the witness asked him as to whether some materials were issued earlier, which was replied to in negative. The witness further stated that when Narendra Singh came back in the evening he was asked about the materials he had kept in the truck to which he replied that for excavation some spares were issued earlier which he had given. The witness further said that on 30-9-87 Ram Naresh Ram told him that Narendra Singh had said that he would call back those articles which he had given earlier. Then on the same date about 5 p.m. Ratneshwar Jha came back with three articles kept in a gunny bag. At that time he was at hospital but when he came back, Ram Naresh Ram told him that Ratneshwar Jha had given back those articles.

18. During cross examination this witness said that he did not know as to whether the articles kept in the truck on 29-9-87 were issued or not. When he was asked as to whether on that day any article was stolen, the witness could only say that he could tell that after enquiry.

19. The most important aspect of evidence is that the witness has admitted on the very next day of taking away of those three articles those were returned by Ratneshwar Jha. Moreover this Senior Store Keeper has shown his ignorance, in reply to the third question in cross-examination, as to whether those articles were issued articles. Of course subsequently he said that the articles were taken away which were not issued that day. But when these two statements are read together and reconciled, it would appear that when the witness had meant in subsequent statement was that no requisition was issued for those three articles on 29th September, 1987.

20. The second witness produced by the management is Ram Narsh Ram, Store Keeper. He submitted that on 29-9-87 he was told by Sr. Store Keeper at about 1 P.M. that Narendra Singh had taken some articles on a vehicle in the morning. He further said at about 4.30 P.M. when Narendra Singh came there he and the Sr. Store Keeper asked him about those articles to which Narendra Singh replied that the articles of excavation were issued. On enquiry he also showed the requisition for the same. He said that the next day Sr. Store Keeper asked Narendra Singh to get back the articles to which he agreed and at about 3.30 P.M. Ratneshwar Jha came back with those articles and deposition in the stores. Sri Jha told him to check the articles. At about 4.30 P.M. Sr. Store Keeper came and that gunny bag was opened in which one cross-bearing, one bearing and one regulator were found. In cross-examination this witness said that the senior official thereafter had seized the requisition, gate pass and daily issue register book. He was further asked as to whether the articles which were later seized and on which he also had signed, were issued articles or stolen articles. The witness answered that the requisition for those articles was shown by Narendra Singh. When he was further pressed by a question that his statement meant that those articles were issued ones, the witness admitted that according to the requisition those were issued articles.

21. Admittedly these two witnesses are most important witnesses. Their statements make it clear that articles were taken away in the truck in presence of Sr. Store Keeper, and that there was a requisition for those articles according to which those articles were issued from the stores. The evidence of these witnesses also shows that on 30-9-87 it was Ratneshwar Jha who had brought back those articles. Their evidence also shows that when the Senior Store-Keeper asked, on 30-9-87, Narendra Singh to bring back those articles, Narendra Singh readily agreed and articles were returned back on the same day. The fact that those articles were taken before the eve of the Senior Store-Keeper and the fact that Narendra Singh had readily agreed to have those articles brought back and that on the same day those articles brought back by Ratneshwar Jha are the pointers which belie the theory of theft by the concerned workman. As already seen, the management's witness has admitted that Narendra Singh had shown requisition for those articles and, according to that, those articles had been issued.

22. The management has laid stress on the evidence of Jonil Ahmad, Foreman Incharge and Noor Mohammad, Fitter Grade-III. Jonil Ahmad said that on 29-9-87 he was going by truck to Ranchi to bring oil on which Narendra Singh loaded some articles and got the articles down near Durga Mandap and took that to his residence. Noor Mohammad also has said that Narendra Singh had got some articles down at Durga Mandap and thereafter this witness went on that truck to Ranchi. Both the witnesses have said that they did not know as to what were the articles inside the gunny bag. These two witnesses were also not cross-examined.

23. It has been argued that such evidence shows that the articles were taken to the house of Narendra Singh. But Sri D. Mukherjee, learned counsel for the workman has argued that these witnesses proved nothing because these witnesses have not said as to what articles were taken down. He further said that if the evidence of these two witnesses was correct, this did not show any mala fide on the part of the concerned workman because, as the workman has claimed, he was to reach those articles at excavation site which might not have been in the way to Ranchi. He submitted that Ratneshwar Jha was admittedly working at Excavation site and obviously whatever articles were taken by Narendra Singh had reached Sri Jha because it was Sri Jha who had brought those articles back to the Sirka Stores on the next day. He argued that there was nothing on the record to suggest that on the next day the concerned workman had gone to his house and had conveyed those articles to Sri Jha or got it conveyed to Sri Jha who brought that back to the stores. Therefore it is clear that the articles had reached Sri Jha.

24. There is force in such argument and merely the evidence of these two witnesses on the aforesaid ground would not show that Narendra Singh had committed theft of articles or had intended to do so.

25. The next witness produced by the management was Birju. Tyndal, who was said to have placed those articles in

gunny bag and loaded on the truck at the instruction of the concerned workman. He submitted that on 29-9-87 he had taken out from the stores two hose pipes of which gate pass was prepared, after which at the direction of Narendra Singh, he brought the gunny bag which Narendra Singh filled up with three articles and asked him to put the same in the truck. He also said that when Bara Babu (Sr. Store-Keeper) asked Narendra Singh, Narendra Singh told him that articles were of the truck. He further said that on the next day at about 4 P.M. those three articles were brought back to the stores.

26. In cross-examination the witness admitted that at the time of loading those articles Sr. Store-Keeper and Guard were present. This witness also admitted that the Guard also checked the issued articles but those articles were not checked by him.

27. The next witness was Ramanoj Sharma, Driver of the truck. He narrated about keeping of the articles kept in the gunny bag, on the truck at the instance of Narendra Singh. He also said that he got the gunny bag down near his house, took that into his house and then came back to the Truck and proceeded towards Ranchi.

28. The evidence of this witness is akin to the evidence of two other witnesses already discussed.

29. The next witness was Ratneshwar Jha, Fitter Gr. I. He submitted that on 20-9-87 he found cross bearing of the dozer broken. Engineer gave him requisition as also a truck on which he came to the store where he was given a cross-bearing and gate pass which he brought to the site of excavation.

30. In cross-examination this witness said that he had not prepared this requisition, but he admitted that two items were written in the requisition (prepared by the Engineer). He clarified that the two items were cross assembly and cross bearing, four in number. He said that cross assembly was not issued and only one cross bearing was issued.

31. There is obvious discrepancy here. According to the witness he was given only one cross bearing but according to Ext. M-3 two cross bearings were issued against four requisitioned. According to the evidence of this witness he took back only one cross bearing which would show that at least one cross bearing was left at the store. From his evidence in cross-examination it will also appear that the witness had admitted that no one either requisitioning officer, or he himself or the Senior Store Keeper at Sirka had crossed the blank space in Ext. M-3.

32. This witness was asked as to whether it was a practise that sometimes he brought blank requisition and filled that up in the stores as per requirement and got the items issued. This witness replied that in such case some officer also accompanied him ask the officer filled up the requisition form and took back the articles. By this answer this witness appears to have conceded that sometimes blank forms were also brought. This witness has denied that on 30-9-87 he had returned those articles to the store though he had admitted that he had come to the store on 30-9-87 for some other work.

33. So far exculpatory aspect of his evidence is concerned, admittedly this witness was also issued charge-sheet for the theft of some articles on 20-9-87, as admitted by the management's witness in course of hearing on the preliminary issue. However, two witnesses have also established that it was Ratneshwar Jha who had brought back those articles into the store the next day. Even this witness has admitted that on 30-9-87 he had come to the store. Moreover from the evidence of this witness atleast it appears that one cross bearing was left at the store on 20-9-87.

34. Thereafter the defence witnesses were examined. First was Kamla, Tyndal at Sirka Store. He submitted that in the morning of 20-9-87 Ratneshwar Jha had come with a requisition and was talking with the Sr. Store-Keeper for taking some articles. The Sr. Store-Keeper and Narendra Singh were ready to give the articles after which he went to the Regional Store. He further said that in the evening of 30-9-87, Ratneshwar Jha brought some articles to the store in a gunny bag. There is nothing in his cross-examination to create any doubt on his testimony.

35. Deo Chand, Tyndal at Sirka Store was another witness. He gave the statement on the similar lines.

36. Nextly Narendra Singh examined himself. He said that on 20-9-87 Ratneshwar Jha had come with requisition of two articles which the concerned workman had shown to the Sr. Store-Keeper. Ratneshwar Jha told that he needed some more articles which would be filled-up is the requisition which was allowed by the Sr. Store-Keeper. Thereafter the concerned workman issued those articles and the Sr. Store-Keeper signed over that. When the articles were issued, Ratneshwar Jha told that he was leaving behind three articles which he would take back later on availability of a vehicle or they should arrange for sending of the same because the articles were heavy. The Sr. Store-Keeper agreed at which gate pass for those three articles was not prepared. The proceedee admitted that on 29-9-87 while he was going to Ranchi on a truck he got issued articles placed on the truck by Buju Tyndal. The witness said that the Sr. Store-Keeper was also there and he also asked about the articles at which the proceedee told him that those were the same articles which were issued to Sri Jha. The witness claimed that he handed over the articles to Sri Jha. But in the evening when he came back the Sr. Store-Keeper wanted him to get back those articles for checking. Accordingly the proceedee had Ratneshwar Jha brought back those articles on the next day evening. Those articles were checked by the Sr. Store-Keeper and Ram Naresh Ram who found that those were articles mentioned in the requisition.

37. This witness further said that thereafter the store was closed and on its re-opening on 3-10-87, the Sr. Store-Keeper came with a senior officer, S. B. P. Sinha and they seized the three articles, its requisition and the Issue Register. Photo copy of this seizure list has been placed on the record.

38. This witness claimed in his evidence that he was working in the store since 1976 but never any fault was found in him. He submitted that his only fault was that, being a co-worker, he had taken those articles and handed over to Ratneshwar Jha.

39. In cross-examination this witness has admitted that item nos. 3 and 4 were filled up by him. He also admitted that he did not hand over the responsibility of three articles that were left behind, to Ram Naresh Ram when he came back from Regional Office. He denied that the responsibility of issuing the articles was his because the Senior Store-Keeper used to sign over the gate pass after issuance of the articles. He admitted that on 29-9-87 no gate pass was prepared for taking out those three articles. But he gave explanation that he did so because Ratneshwar Jha already had signed over the receipt of the articles. He was asked as to why he did not get those articles sent before 29-9-87 at which the answer was that in the meantime no conveyance had come on which the materials could be sent.

40. This is the evidence on the record as had come in the domestic enquiry.

41. My attention has been drawn towards the evidence of MW-1 Esquidy Officer Pratap Kumar Roy Choudhary. Admittedly the evidence brought on the record on the preliminary issue relating to the fairness of the domestic enquiry is a "material on the record" within the meaning of Sec. 11-A of the Industrial Disputes Act, 1947 in its proviso. For this the decision of Hon'ble Supreme Court reported in (1973) 10 SCLJ, 150 (between Workmen of Firestone Tyre and Rubber Co. and the management and others) had discussed what constituted "materials on record". Their Lordships observed that the evidence taken by the management at the enquiry and in addition any further evidence led before the Tribunal also constituted "materials on record". Their Lordships observed that all the parties had agreed that even after Section 11-A the employer and employee could adduce evidence regarding the legality or validity of the domestic enquiry if one had been held by the employer.

42. In another Full Bench decision of Hon'ble High Court, Patna, reported in 1991 (62) F.L.R. 273 (between Indian Aluminium Co. Ltd. and the Presiding Officer, Labour Court, Ranchi and another), Hon'ble S. B. Sinha in a separate observation held that the evidence adduced by the parties

before the Tribunal relating to the legality, validity of the enquiry would also constitute "materials on record"

43. Now coming back to the evidence of MW-1 on the preliminary issue, he admitted that on the allegation of same theft, charge-sheet was issued against Ratneshwar Jha in which he had held enquiry and found him guilty. He proved the charge-sheet issued against Sri Jha which was marked Ext. W-1.

44. Ratneshwar Jha, in Ext. W-1, was charged that on 20-9-87 he had received two nos. of cross bearings, one regulator and one bearing for use in dozer, but he deposited only one cross bearing in the site store of excavation and that he had taken away the remaining three items without a gate pass in connivance with the Asstt. Store-Keeper/Issue Clerk with an intention to commit theft, and misuse.

45. This charge-sheet clearly shows that Ratneshwar Jha had received on 20-9-87 the same three items for which chargesheet was issued against Narendra Singh alleging that the theft with regard to those three items was committed on 29-9-87.

46. Though Narendra Singh had admitted that the two items were filled up in his hand but this charge-sheet would show that those items were filled up on 20-9-87 itself, i.e. before the gate pass was issued that day on which the Senior Store-Keeper had to sign. This would rather support the case of the concerned workman, as given in his evidence before the Enquiry Officer, that Ratneshwar Jha had said that he would get filled up more items in the requisition form which were required by him.

47. Sri Mukherjee has argued before me that when another person was charged with the theft of the same materials stating that those were issued to him on 20-9-87 itself, how can another person be charged with the theft of same articles after nine days. When pointed out that in Ext. W-1 the charge also said that Ratneshwar Jha had committed the theft in connivance with Asstt. Store-Keeper/Issue Clerk, Sri Mukherjee replied that no name has been given in this charge-sheet and, moreover, the charge-sheet against Narendra Singh did not say that he intended to commit theft in connivance with someone else which was bound to be the charge, if at all, when Ratneshwar Jha was clearly charged that those three items were also issued to him on 20-9-87 itself. He submitted that under such circumstances two persons cannot be held guilty of committing theft of same articles on two different occasions.

48. There are a number of points which have emerged from the materials on the record which create grave doubts about the charge of theft or intent to commit theft or fraud etc. against the concerned workman, besides the points already discussed just above.

49. Evidently four articles were issued on 20-9-87 itself as shown by the evidence on the record. If Narendra Singh wanted to commit theft of those articles, then he could have had enough opportunity to do so in between the period at a time of his choice. It does not stand to reason that while not availing the opportunity of 8 to 9 intervening days, he would chose to commit theft of those articles wide in presence of Sr. Store-Keeper, his superior, and the Guard. There is evidence that he got down those materials at his residence, but from the evidence of management's witnesses it was evident that before those articles were returned to the stores the next day, those had reached Ratneshwar Jha because it was he who had brought back those articles.

50. From the evidence it also appears that while those articles were being loaded on the truck, the Sr. Store-Keeper had asked about those articles and, according to the proceedee and witnesses he had replied that those were articles issued earlier. Obviously the Senior Store-Keeper did not object to the loading of those articles on the truck. This gives credence to the assertion of the concerned workman that the Sr. Store-Keeper was in the knowledge that Sri Jha had left behind some requisitioned articles. Even from the evidence of Ratneshwar Jha and Ext. M-3, it would appear that though two cross bearing were issued, Ratneshwar Jha with him had taken away only one cross bearing.

51. Therefore, I find that serious doubts are created against the allegation of theft by the concerned workman. When such doubts arise, obviously the benefit of that has to be given to the concerned workman.

52. On consideration of the entire evidence on the record as discussed above, I find that the management in the domestic enquiry had not properly proved the charge of misconduct levelled against the concerned workman in the charge-sheet.

53. However, it must also be held that the workman had definitely committed a misconduct. He, admittedly, while taking away the articles did not get the gate pass prepared, though the concerned workman has explained it by saying in his evidence that since Ratneshwar Jha already had signed receipt of those articles, he did not think it necessary to get the gate pass issued. May be that this was also true that it was Sr. Store-Keeper who should have ensured that the gate pass was properly issued on 29-9-87 since the articles were taken out in his presence, but there is no gain saying that the concerned workman, being an old employee in the stores must have known the formalities that had to be done before taking out the articles. May be that he had no malafide intention in not getting gate pass issued, still it is a serious latch on his part.

54. It may be argued that the charge-sheet did not speak of non-issuance of gate pass, but this must be taken to be a incidental to the charge of theft. Therefore, though I find that the management has not satisfactorily proved the charge of theft or intention to commit theft against the concerned workman, but it has to be held that the workman concerned had committed mistake by not getting gate pass issued for those articles on 29-9-87.

55. But punishment of dismissal is too harsh for this mistake which may not have been intentional. I though find that the workman should be reinstated since the main charge has failed against him, still he deserves some punishment for the aforesaid latch on his part, which was a serious procedural mistake committed by an experience employee.

56. However, a mitigatory circumstances may also be found so much so that though the Enquiry Officer has filed his report on 13-11-1987 yet the management passed order of dismissal on 22-4-89 (Ext. M-9). But this is not to say that on this ground the workman should not be punished.

57. I find that if the workman is denied of his back wages, while ordering his reinstatement that would be just punishment for his committing the aforesaid mistake.

58. Following, therefore, is the award—

The action of the management of Sirka Colliery in not reinstating the workman, Narendra Singh was not justified. The management is directed to reinstate him to his post within a month of this award becoming enforceable. However, in view of the circumstances discussed above it is held that the workman concerned is not entitled to any back wages on his reinstatement.

Under the circumstances of the case, there would be no order as to the cost.

P. K. SINHA, Presiding Officer

नई दिल्ली, 5 जून, 1995

का.आ.1818—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मैनेजर महाराष्ट्र टेलिकम सर्कल, बम्बई के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध से निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई 2 के पक्षों को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-5-95 को प्राप्त हुआ था।

[संख्या एल-40012/166/92-आईआर (डीयू.)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 5th June, 1995

S.O. 1818.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bombay No 2 as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Chief Gen. Manager Telecom Circle, Bombay and their workmen, which was received by the Central Government on 31-5-95.

[No. L-40012/166/92-IR(DU)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. PANSE, Presiding Officer

Reference No. CGIT-2/70 of 1993

Employers in Relation to the Management of
D/o Telecommunication, Solapur

AND

Their Workmen

APPEARANCES :

For the Employer : Mr. Pradhan, Advocate

For the Workmen : Mr. S. Pillai, Advocate
Bombay, dated 18th May, 1995

AWARD :

The Government of India Ministry of Labour by its letter No. L-40012/166/92-IR(DU) dated 17-9-93 had referred to the following industrial for adjudication.

SCHEDULE

"Whether the action of the management of Chief General Manager, Maharashtra Telcom Circle, Bombay and Chief General Manager (Maintenance) Telcom Circle, Bombay, both under the deptt. of Telecommunications, in relations to Telcom District Solapur, in terminating the services of Shri S. L. Rathod, casual driver and subsequently appointing a new recruit as as regular driver is justified ? If not, to what relief the said workman is entitled ?"

2. The worker S. L. Rathod contended that initially he was engaged as a casual moter driver cum mazdoor in the department of telecommunication, Solapur. He worked in that capacity between 1-5-1987 to 31-7-1990 in the office of Assistant Engineer Micro Wave maintenance (I) Micro Wave Station, Solapur and Assistant Engineer (II) M/W/MTCE/H Nagar Solapur.

3. The worker contended that Assistant Engineer Micro Wave Maintenance (I) informed him that his services are no more required from 1-8-1990. He

pleaded that his removal from service is illegal, it amounts to retrenchment and no procedure contemplated under the Industrial Disputes Act is followed. It is pleaded that he had worked continuously with the first party for more than 240 days in a year. He avert that after his illegal termination retrenchment the department engaged a fresh casual Labour driver cum mazdoor even though the workman was ready and willing to serve in that capacity. He, therefore, prayed that he may be reinstated in service with full backwages and continuity. He also claimed for other reliefs.

4. The management opposed the application by written statement Ex. '3'. It is contended that the workman was employed as a labour when here was an absentism. It is asserted he was nowhere employed in a regular vacancy. It is pleaded that when it came to the notice that he is also a driver he was assigned the work of a driver but he was never posted as a driver. His posting was casual mazdoor. It is accepted that the working days which are mentioned by the worker are correct. It is submitted that it is wrong to say that the services of the worker were illegally terminated and it amounts to illegal retrenchment. It is avert that the worker is not entitled to any reliefs as claimed.

5. The issues that fall for my consideration and my findings thereon are as follows :

ISSUES

1. Whether the action of the management of Chief General Manager Maharashtra Telcom Circle Bombay and Chief General Manager Maintenance Telcom circle Bombay, Both under the department of telecommunication in relation to Telcom District-Solapur in terminating the services of Shri S. L. Rathod casual driver and subsequently appoint new recruit as a regular driver is justified ?

2. If not, what relief the said workman is entitled ?

FINDINGS

Not justified.

As per final order.

REASONS

6. S. L. Rathod (the workman) affirmed that he worked for more than 240 days in a calendar year between 1-5-1987 to July 1990. This position is not disputed by the management. It is also not in dispute that in these days most of the part the workman worked as a driver. No doubt there is no appointment letter given to the said worker that he is posted as a driver or a driver-cum-mazdoor.

7. V. R. Ramu (Ex. '8') the divisional engineer telegraph micro wave maintenance telephone Bhavan, second floor, Solapur affirmed that the worker was appointed as a driver cum mazdoor in a casual capacity. He was appointed on Micro Wave Maintenance Division at Solapur. His appointment came to be made because of absentism of various persons working in that division. In the cross-examination in categorical term he admits that he is agreeable to appoint the worker in a regular service of a driver but without backwages. It is tried to argued on behalf of the

management that the worker had worked in another section of the management and had received the wages. Therefore he is not entitled to back wages.

8. It is pertinent to note that the worker and his Advocate filed a purshis at Ex. '9' after the cross-examination of the management's witness that they are agreeable for reinstatement in service with continuity but without backwages.

9. It is undisputed that the worker is in service for more than 240 days in a calendar year. It can be further seen that after his removal another driver was appointed by the first party under such circumstances the worker is entitled to reinstatement in service with a continuity but without backwages. If there is new appointment as a driver by the first Party its action of removal of the worker is not justified. For these reasons I record my findings accordingly and pass following order.

ORDER

1. The action of the management of Chief General Manager Maharashtra Telcom Circle Bombay and Chief General Manager (Maintenance) Telcom Circle Bombay both under the department of Telecommunication in relation to Telcom District-Solapur in terminating the services of Shri S. L. Rathod casual driver and subsequently appointing a new recruit as a regular driver is not justified.

2. The management is directed to appoint S. L. Rathod as a driver with continuity in service but without backwages.

S. B. PANSE, Presiding Officer

नई दिल्ली, 5 जून, 1995

का.प्रा.1819:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर टेलीकोम बम्बई, के प्रबंधन के संबंध नियोजकों और उनके कामकारी के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई नं 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-5-95 को प्राप्त हुआ था।

[संख्या एल-40011/18/86-डी-2(बी)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 5th June, 1995

S.O. 1819.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court Bombay No. 2 as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of General Manager, Telecom, Bombay and their workmen, which was received by the Central Government on 31-5-95.

[No. L-40011/18/86-D.II(B)]

B. M. DAVID, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. PANSE.—Presiding Officer.

REFERENCE NO. CGIT-2/66 of 1992

Employers in relation to the management of
Telcom Factory, Deonar, Bombay.

AND

Their workmen.

APPEARANCES :

For the Employer.—Shri B. M. Masurkar, Adv.

For the Workmen.—Smt. Radha D'Souza, Adv.
Bombay, dated 16th May, 1995

AWARD

The Government of India Ministry of Labour by its letter No. L-40011/18/86-D.II(B) dated 15th of December, 1992 had referred the following industrial dispute to this Tribunal for adjudication.

THE SCHEDULE

“Whether the action of General Manager, Telcom factory, Bombay in implementing the decisions of “Central Trade Review Committee” in truncated shape was justified and not causing discrimination between workman and workman in the category of setters-cum-machine operators in the Telecom Factory, by not fixing them in the skilled category in the wage scale of Rs. 260-400 (pre-revised) w.e.f. May, 1985. If so, what relief the workmen concerned are entitled to?”

2. Post and Telegraph Mazdoor worker's union filed statement of claim through the Secretary Savant. It is contended that the workmen concerned in the reference works in the Telecom factory in the category machine shop operators. The employer is the Telcom factory situated at Deonar Bombay.

3. The Government of India Ministry of Communication Post and Telegraph by its letter dt. 31st of July, 1982 appointed a Central Trade Review Committee known as CTCRC to review and rationalise existing industrial trades with a view to improving efficiency and productivity. The committee consisted of Chairman, four members, one member from secretary and one member from labour. It submitted its report to the Government in July, 1985.

4. Prior to CTCRC recommendations machine operators were fixed in the category of semi skill workers. The committee recommended the work of machine operators is of a skilled nature with a view of training, education and knowledge require. It reported that the machine operators be placed in the skill category in the pay scale of Rs. 260-400. These recommendations and observations were to be made

applicable to all machine operators working in different sections in different factories.

5. In the Telcom factory at Calcutta and Jabalpur the designation machine operator was not given and instead persons performing similar jobs were designated as machine setter-cum-operator. This designation was not found in the trade test book of the Telcom factories nor was it recommended by the Central Trade Test Board. The CTCRC therefore recommended that in view of that the machine-setter-cum-operator in these sections be re-designated as machine operator and continued in the pay scale of Rs. 260-400.

6. At present all machine operators in various sections of the Telcom factory at Bombay are placed in semi skill category in pre-revised scale of Rs. 210-290. Most of the person incumbants are trade workers and highly skill. The employers have implemented the recommendations of CTCRC in Telcom factories situated at Calcutta and Jabalpur but so far as Bombay Telcom factories are concern the recommendations were not implemented. It is submitted that the employer may be directed to implement CTCRC recommendations of the Bombay workman amount to discrimination. It is, therefore, prayed that the employer may be directed to implement CTCRC recommendations from the date on which they were made to direct to pay the arrears resulting from the implementation with interest at the rate of Rs. 18 per annum with other reliefs.

7. The employer namely the management of Telcom Factory Deonar Bombay resisted the claim by its written statement Ex. '3'. It is denied it had refused to implement the directions given by the Government pertaining to CTCRC report and which was implemented at Calcutta and Jabalpur. It ascertained that they are for operating various types of machine is not the same hence the Government did not accept this recommendations but with a view to giving an incentive to the industrial workers in this category. It was decided to introduce a ratio of 3 x 1 between machine operators (semi skill) and machine setter-cum-operators (skill) and also to re-designate the existing machine setter as machine setter-cum-operator.

8. The Government therefore decided to discuss the matter in detail with representatives of all the Unions including the present union. A joint meeting was conveyed on 29-8-1984. During this joint meeting detail discussion was held in respect of certain recommendations of Central Trade Review Committee which could not be accepted. The recommendations in respect of machine operators were on item No. 11. They were also discussed. It is submitted that the order prescribing the ratio between machine operators and machine setter-cum-operators have already been implemented in other 2 factories at Calcutta and Jabalpur. These orders were issued after obtaining approval of the cabinet. It is denied that a discrimination has been done in Telcom Factory Bombay while implementing the decision of the Central Trade Review Committee regarding the category of workers wise machine setter-cum-operators. In view

of the joint committee the Government issued orders dt. 10-4-1985. It is submitted that the Union should not have any grievance as the Government has an authority to accept the recommendation partly or fully. Under such circumstances it is submitted that the reliefs claimed by the Union are without any justification and deserves to be dismissed with cost.

9. S.A. Kazi, President of the Post & Telegraph Mazdoor Worker's Union filed rejoinder at Ex. '5' and reiterated their stand which is taken in the statement of claim. It is submitted that at Calcutta and Jabalpur the jobs of machine operators were already in a skill category and designations were different requiring redesignation only. Therefore, it is, submitted that there is no implementation of the orders at Calcutta and Jabalpur. It is submitted that the Government may accept the recommendations of the committee partly or fully or with modification however non-acceptance or modification must be founded on reasonable and intelligible criteria.

10. My Learned Predecessor framed issue at Ex. '4' and my findings thereon are as follows :

ISSUES

1. Whether the action of the General Manager, Telcom Factory, Bombay in implementing the decision of "Central Trade Review Committee" in truncated shape was justified and not causing discrimination between workman and workman in the category of setters cum machine operators in the Telcom Factory, by not fixing them in the skilled category in the wage scale of Rs. 269-400 (pre-revised) w.e.f. May, 1985 ?
2. If so, what relief the workman concerned are entitled to ?
3. What Award ?

FINDINGS

The action is justified.
Does not survive.
As per final orders.

REASONS

11. V. S. Savant the Office bearer of P. & T. Mazdoor Union filed his affidavit in support of the statement of claim. The Union had not led any other oral evidence. As against that the management had filed a purshis (Ex. '12') that they do not want to lead any oral evidence.

12. Most of the facts in this reference can be said to be undisputed. On 31st of July, 1982 the Government of India Ministry of Communication Post and Telegraph appointed Central Trade Review Committee known as CTRC. The terms of reference of the committee were as follows :

- (a) Job evaluation and rationalisation/re-categorisation of trades of Industrial staff in Telcom Factories including review and re-drafting of detailed job description in the light of experience gained with a view to improve productivity.

- (b) Suggesting proper balances in different trades including fixation of ration, stagnation and revision of promotional avenues.
- (c) Removal of disparities/anomalies in various trades and in the staffing pattern for similar jobs in different Telecom Factories.
- (d) Review of existing recruitment procedure for Industrial staff.
- (e) Suggesting ways and means for deploying the industrial labour on diversified jobs taking into account the advancement in technology and introduction of modern methods of production.

13. It is not in dispute that the Telcom factories are situated at Bombay, Jabalpur, Bhilai and Kharagpur. The various categories of industrial staff working in all these factories have classified as follows :

1. Unskilled
2. Semi skilled
3. Skilled
4. Highly skilled (B)
5. Highly skilled (A)
6. Supervisory staff.

14. Normally initial recruitment of industrial staff is unskilled trade. The trades in other categories are promotional avenues except small percentage of direct recruitment in semi-skill trades. The promotion is through qualifying trade test conducted by local trade test board in accordance with rules and procedure.

15. In July 1983 the committee submitted its report. So far as machine operators are concerned it reported that :

"Machine operators who are in the semi-skilled category in the scale of pay of Rs. 210-290 are operating various types of machine like drilling tapping, screwing, etc. The four spindle drilling machines were telegraph, telephone brackets are drilled are being operated by workers in the skilled category, who are designated as "Machine Setter-Cum-Operator"

"The Operators should not only have sufficient knowledge of machines, but also possess such knowledge to check to some extent the quality of the production coming out of the machines. He should be in the position to detect and rectify certain minor operational defects, so that, the effective machines working hours are not lost. He should also be able to set tools, grind and shape simple tools used in the machines. He should not fully depend on others viz. setters etc. for quality production".

16. However, the Government did not accept the recommendations of the committee in toto but it examined it and found that most of the machines the nature of job is of repetitive nature and skill required for operating various types of machines is

not the same. Hence this recommendation was not accepted but with a view to giving incentive to the industrial workers in this category it was decided to introduce ratio of 3 : 1 between machine operators (semi-skilled) and machine setter-cum-operator (skilled) and also to redesignate the existing machine setter as machine setter-cum-operators. It is argued on behalf of the management that while recommending this new ratio the rational behind this was that machine setter-cum-operators will be utilised both for setting operating on them as well. The existing machine setters will be given an option to work as machine setter-cum-operator and in view the recruitment in the skill grade will be made only to the post of machine setter-cum-operator.

17. It is argued on behalf of the Union that in the joint meeting which was held on 29/8/1984 they were present but they had not signed the minutes. It is also submitted on their behalf that item No. 11 was not discussed at all. But I do not find any merit in it. It appears that so far as machine operators are concerned which are included in item No. 11 must have been discussed in the joint committee as the whole report was considered there. In that meeting the Union's were informed regarding the ratio of 3 : 1. Ex. 'A' is the copy of the minutes of the joint meeting issued by Government dt. 10th of September, 1984.

18. It is argued on behalf of the Union that the nature of the work which carried out by erstwhile machine operators remained to be same by changing their name that machine setter-cum-operators has not changed their duties. It is, therefore, the pay scale to these 2 categories which the management wants to implement is discriminatory. I am not inclined to accept this argument because it is meant with a view to giving an incentive to any industrial worker in this category. It can be further seen that in the minutes it was decided that the existing machine setters-cum-operators in skill grade was meant for performing the duties in both setting the machines as well as operating on them. The machine setters would be given an option to work as machine setter-cum-operator so that they would not be put to loss but for future recruitment in the skill grade would be made only to the post of machine setter-cum-operator. This has not caused any discrimination between workmen and workmen. It is material to note that this ratio has been accepted at two Telcom factories situate at Calcutta and Jabalpur.

19. It is not in dispute that the Government may accept the recommendations of the committee partly or fully or with modification. Here in this case the Government had modified the recommendations with a view to give better avenues to the concerned categories of workers. From the submission made before me it cannot be said that these modifications are not well founded and unreasonable.

20. For all these reasons I record my findings on the issues accordingly and pass following order.

ORDER

The action of the General Manager Telcom Factory, Bombay in implementing the decision of Central Trade Review Committee in Truncated 3 : 1 was justified and not causing discrimination between workmen and workmen in the category of setter from machine operators in the Telcom factory by not fixing them in skill category scale of Rs. 260-400 (pre-revised) w.e.f. May, 1985.

No order as to cost.

S. B. PANSE, Presiding Officer.

नई दिल्ली, 5 जून, 1995

का.आ. 1820:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑयल कॉर्पोरेशन लिमि. के प्रबन्धन के संयुक्त नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, (स. 1), धनबाद के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 2-6-95 को प्राप्त हुआ था।

[संख्या एल-30012/7/90-आई आर (विविध) आई आर (कोल-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 5th June, 1995

S.O. 1820.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Ltd. and their workmen, which was received by the Central Government on 2-6-95.

[No. L-30012/7/90-IR(Misc.)]IR(Coal-I)
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d)(2-A) of the Industrial Disputes Act, 1947.

Reference No. 140 of 1990

PARTIES :

Employers in relation to the management of Indian Oil Corporation Ltd., Refineries Division, Begusarai.

AND
Their Workmen

PRESENT :

Shri P. K. Sinha,
Presiding Officer.

APPEARANCES :

For the Employers : Shri S. K. Mishra, Sr.
Personnel & Administrative Officer, and
Shri V. Narain, Personnel & Administrative Officer.

For the Workmen : Shri N.M. Prasad, General Secretary.

STATE : Bihar **INDUSTRY :** Coal
Dated, the 17th May, 1995

AWARD

By Order No. L-30012/7/90-IR(Misc.) dated 8-6-1990 the Central Government in the Ministry of Labour, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes, 1947 referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Barauni Refinery, I.O.C., Begusarai in superseding the seniority/promotion of Sri Nawal Kishore Pd. Singh, Store Keeper is justified ? If not, to what relief is the workman entitled ?”

2. The sponsoring Union has stated in its written statement that the concerned workman Nawal Kishore Prasad Singh has been working under the management since 6-7-1962 in different capacities, from Typist-Clerk to the post of Assistant. With the implementation of the recommendations of the Administrative Staff College of India, Hyderabad (hereinafter referred to as Staff College) this workman was declared surplus by the management with effect from 6-9-85 alongwith other workmen. Sri Singh was re-deployed and re-designated as Store Keeper with effect from 28-11-85 and was posted as such in Materials (Store) Department by an order in which it was mentioned that his seniority in redeployed category would be below the existing workmen working in the same category there.

3. The written statement also states that, similarly, S/Shri Prabhu Singh, P. N. Sharma and Mahesh Ram were also declared surplus by the management and the first two were re-designated as Purchase Assistant in Materials (Purchase) Department with effect from 6-9-85 and 28-11-85, respectively, while Mahesh Ram was re-designated as Store-Keeper and was deployed in Materials

(Store) Department with effect from 28-11-1985. Another workman Upendra Prasad was similarly re-deployed as Store Keeper and was posted in Materials (Store) Department with effect from 23-12-85. To the aforesaid three re-deployed persons (excluding Upendra Prasad) seniority was given to them with effect from 2-9-85, i.e., with retrospective effect.

4. But in case of the concerned workman, who was re-deployed in the post of Store-Keeper, the management placed him below five other workmen who were to be promoted from the post of Assistant Store Keeper to the post of Store-Keeper. The names of those five Assistant Store-Keeper, namely, Bhorelal Singh and four others, have been given in para 8 of the written statement. It has been argued that though at the time of re-deployment those five were junior to the concerned workman, yet the management provided that those Asstt. Store Keepers, when promoted in due course, would secure seniority above the concerned workman. It has been submitted that those Asstt. Store Keepers were promoted as Store Keepers between 1985 to 1987 and again were promoted to another senior position, to the post of Senior Store-Keeper/Store Verifier in the years 1987—90, superseding the the concerned workman.

5. Here it may be mentioned that in para 8 of the written statement though only five workmen have been mentioned to have so superseded the concerned workman, in para 9 of the written statement the name of the 6th workman, Abdul Samad has also been added.

6. The sponsoring Union has claimed relief of restoration of seniority of the concerned workman with effect from 28-11-1985 which was the date on which he was re-designated as Store Keeper, and further to award promotion to him with retrospective effect.

7. The management appeared and filed its written statement stating, inter alia, that the concerned workman was bound by the conciliation settlement dated 14-6-79 entered into between the management and the recognised Union, namely, Barauni Telshodhak Mazdoor Union in which it was provided in clause 3 for a study to be conducted by the Staff College for determining the manpower requirement promotional avenue etc. It was also the implementation of the recommendations of the Staff College would be done in consultation with the recognised Union. The recommendations of the Staff College were implemented with effect from 6-9-85, accordingly, in consultation with the recognised Union. The concerned workman who was declared surplus had to be adjusted in other department and he was so re-deployed and re-designated as Store Keeper with effect from 28-11-85 to which the concerned workman did not object.

8. Thereafter a number of discussions took place during the months from September to December, 1985 in which it was agreed between the management and the recognised Union that two Assistants, the concerned workman and one Upendra Prasad should be re-deployed as Store Keeper and their seniority would be reckoned, in the category of Store Keeper, below five workmen who were to be promoted from the post of Asstt. Store Keeper to the category of Store Keeper. This was done in view to protect the interest of the workmen who were working in the Materials (Store) cadre from the beginning. This way on his re-deployment the concerned workman was placed below five Asstt. Store Keepers who were yet to be promoted to the post of Store Keeper, and the seniority list was prepared accordingly. It is claimed that the concerned workman knew, while accepting his re-deployment, that he would be placed below those five Asstt. Store Keepers, as agreed to also by the recognised Union. Those five Asstt. Store Keepers were also subsequently promoted

5. The management has claimed that this was not a case of supersession rather a case of re-deployment of a surplus workman.

6. It was claimed that the interest of those five workmen could not be adversely affected unless they were given chance to be heard. The prayer has been made to answer the reference in favour of the management.

7. The management also filed a rejoinder to the written statement of the sponsoring Union and the sponsoring Union also filed its rejoinder to the written statement of the management.

8. Both sides have filed a number of documents as well a larger number of decisions. But the issue involved lies within a narrow compass hence I will discuss the relevant materials on the record for coming to a decision.

9. The reference relates to the action of the management in superseding the seniority/promotion of Sri Nawal Kishore Prasad Singh. If the workman was bound by the consent of the recognised Union as displayed in Ext. M-4 in which, as the management claims, the Union had agreed to place the concerned workman in Store Department on re-deployment below five Asstt. Storekeepers who were yet to be promoted as Store-keepers, then the sponsoring Union hardly has any case.

10. The issues for deciding the present reference are as follows :

- (i) (a) Whether the concerned workman was bound by the consent of recognised Union given to the management, as recorded in Ext. M-4 in which it was agreed upon to place his seniority below five Asstt.

Store Keepers who were yet to be promoted on the date he was deployed as Storekeeper ?

- (i) (b) Whether the document in Ext. M-4 can be relied upon as a valid document binding upon the concerned workman ?
- (ii) If the answer of the aforesaid issues go in favour of the sponsoring Union then whether the workman is entitled to any relief and, if so, to what relief ?

11. I will first take up the issue nos. (i)(a) and (i)(b). Issue No. (1)(b) I have formulated in view of the argument made rather strongly that by look of it Ext. M-4 would appear not to be a genuine document.

12. Ext. M-1 is a settlement arrived at between the management and the workmen represented by the recognised Union aforesaid in course of conciliation proceeding held on 14-6-79 before the Joint Labour Commissioner and the Conciliation Officer, Government of Bihar, Patna. According to Clause (iii) of this settlement, it was agreed upon for a study to be conducted by the Staff College for determining the manpower requirements, promotional avenues and other related matters. Sub-clause (4) provided that the recommendations of the Staff College on the terms of reference would be final and binding on the parties to the agreement. Sub-clause (5) provided that the implementation of the recommendations shall be done in consultation with the Union. This was duly signed as provided under law. As a matter of fact the sponsoring Union has not challenged the validity of this document

13. Ext. M-3 is Office Order dated 28-11-85, referring to Office Order dated 6-9-85 (Ext. M-2) through which the concerned workman was declared to be a surplus as per recommendations conducted by the Staff College, ordering re-designation of the concerned workman as Store Keeper with immediate effect and posting him in Materials Department. This order provided that his scale of pay/grade would remain unchanged. This Office Order, significantly, also provides as follows :

“His seniority in re-deployed category would be below the existing workmen working in the same category there.....”

14. Ext. M-3 also provided that other terms and conditions of his service would remain unchanged.

15. Now I will come to the crucial document in this regard which is Ext. M-4. The heading of this document runs as follows :

“Record note of discussions between management of Barauni Refinery and Barauni Telsodhak Mazdoor Union held in the months of September|December, 1985”.

The relevant portion of this agreement is at page 2 under the heading of ‘Materials (Stores)’. Clause (iv) under this heading states as follows :

"Pursuant to the promotion, two Assistants who are surplus shall be redeployed as Store-keeper."

16. As for their seniority in the category of Store-Keeper, in order to protect the interest of workmen already working in Materials (Stores) cadre it was decided to reckon the seniority of these two redeployed workmen below five workmen who would be promoted from Assistant Store Keeper Category to Store Keeper.

17. Though in the beginning this document names four personnels present in behalf of the management and five officials present on behalf of the Union, these persons do not appear to have signed over this document.

18. MW-1, S.K. Mishra who was working in the Personnel Department could not say in his cross examination as to whose initial was present on Ext. M-4. Only one person appears to have initialled it rather on every page, on 25-6-86. In the regard the evidence of MW-2, Vijay Kant Jha, Deputy General Secretary of the recognised Union is important. He answered in cross-examination that he could not say as to who actually had drafted the record notes of discussions in Ext. M-4. But he claimed that this was shown to the Union by the Chief Personnel Manager. But he could not say the date on which it was so shown.

19. It may be mentioned that in his examination-in-Chief he had testified to the settlement in Ext. M-1 and had also said that while implementing the recommendations of the Staff College it was settled in consultation with the Union that the concerned workman and another workmen would be placed in the seniority list below five Asstt. Store Keepers. This discussion was reflected in the record notes of discussions.

20. Coming back to the cross-examination of MW-2, he has said that the concerned workman was a member of their Union. But this has been challenged in the cross-examination when it was suggested that since the concerned workman was never a member of his Union the witness had come to depose in order to harm his cause. Of course this witness denied this suggestion. But WW-1, the concerned workman himself has said that never in his service he was a member of the recognised Union. To quash by the Tribunal this witness submitted that besides one recognised Union there were two un-recognised Unions, though they were registered once, which two Unions the witness has named but he asserted that at the relevant time he was not a member of any Union, recognised or un-recognised. There is nothing on the record to show that at the relevant time this concerned workman was a member of the recognised Union which had entered into a conciliated settlement with the management in Ext. M-1, and which is said to have negotiated during the period

September to December, 1985 with the management the matter of re-deployment as shown under Ext. M-4.

21. WW-2 is Mahesh Ram another redeployed workman who said that he was redeployed as Purchase Assistant and was given seniority with effect from 2-9-85.

22. Obviously this Ext. M-4 is not a thoroughly reliable document. Firstly this appears to be a recorded note of discussions held between the recognised Union and the management between September to December, 1985, i.e., within a period of four months. This itself shows that more than one meetings were held. It is very strange that when the management and the recognised Union were taking such important decisions, they thought it fit to get their decision recorded at a later date encompassing different meetings held between the two sides. As a matter of fact whoever has signed over it, obviously someone from the side of the management, has done so on 25-6-86, i.e., about six months after what could be said as the last meeting between the two parties. It is very difficult to place reliance on such a document.

23. I am not going into the objections raised by the sponsoring Union that as per provision of Sec. 2(p) and 18 of the Industrial Disputes Act and as per Rule 58 of the Industrial Disputes (Central) Rules, 1957, the document in Ext. M-4 could not be said to be a document of legal settlement. However, I will mention here that it was placed before me by the management in course of argument that the document in Ext. M-4 was not a separate settlement but was a note of consultations for the implementation of the recommendations of the Staff College as provided in Sub-clause 5 of Clause-III of Ext. M-1. Even if it be so, no such important document deciding fate and career of workmen could be prepared in such haphazard and careless manner.

24. It was also the argument of the sponsoring Union that Ext. M-4 only mentions "Two Assistants", but it did not name those two Assistants who, on re-deployment to the post of Store Keeper, were to be placed below five Asstt. Store Keepers whenever those Asstt. Store Keepers were promoted.

25. Neither the management nor the Union could have taken any such decision, behind the back of the concerned workman, to his detriment when the Office Order in Ext. M-3 clearly stipulated that seniority of Nawal Kishore Pd. Singh in re-deployed category would be below the existing workmen working in the same category there. Therefore, by this stipulation the concerned workman could have been placed only below the workmen working in the category of Store Keeper from before. Such decision, taken for whatsoever reason and behind the back of the affected workman in

view of the existing stipulation in Ext. M-3, was arbitrary.

26. Therefore, it is not only difficult to place any reliance on the varacity of Ext. M-4, but it is also difficult to agree that in the aforesaid circumstances any agreement reached between the management and the recognised Union in such manner, about the career of the concerned workman could be said to be legal and in conformity with the principles of natural justice.

27. Issue No. i(a) and i(b) are answered as aforesaid.

28. Now coming to the relief to be given to the concerned workman I find that there are impediments in giving any relief. As in every Organisation, promotions are made against existing vacancies. Rightly or wrongly five Asstt. Store Keepers, on their subsequent promotion to the post of Store Keeper have already been shown senior to the concerned workmen. As per claim of the sponsoring Union, reiterated during arguments also, those five persons have further been promoted from the post of Store Keepers. If I direct the management to restore seniority to the concerned workman above those five workmen, it would amount to passing of an order detrimental to the interest of those five workmen, behind their back. This proceeding was started long back and evidence also had commenced before I took charge of this file. In such circumstance I find it not possible to give relief to the concerned workman, directing the management to treat him senior to the aforesaid five other workmen, with retrospective effect. This is also so because there is nothing on the record to show that the concerned workman could be so accommodated above those five other concerned workmen atleast in the matter of further promotion in view of the availability of a vacancy there with retrospective effect.

29. This situation would not have arisen had the sponsoring Union taken up this matter immediately on such supersession of the concerned workman. The sponsoring Union cannot say that it was not in know of the supersession of the concerned workman from before. While MW-2 was being examined, he submitted that during the discussion covered by Ext. M-4 Sri N. M. Prasad, who has been representing the concerned workman, was then Dy. General Secretary of the recognised Union and when the discussions were held, he also had represented the recognised Union and had consented to the settlement. This has not been challenged in his cross-examination. The name of Sri N. M. Prasad also appears as representative of the recognised Union on Ext. M-4. Obviously Shri N.M. Prasad subsequently parted his ways with the recognised Union and became the office bearer in the sponsoring Union.

30. The concerned workman has given different versions as to when he came to know about his supersession. During cross-examination he said that he came to know about his supersession when those five Asstt. Store Keepers had been promoted as Store Keepers. Earlier he had said that they had been so promoted with effect from 1-1-1986. Therefore, he came to know of his supersession with effect from 1-1-86. But he again said that he came to know about his supersession when those five persons were subsequently promoted as Senior Store Keepers, but he was not. As already stated in para 9 of their written statement, the sponsoring Union had admitted that those five Asstt. Store Keepers were subsequently promoted as Senior Store Keepers|Store Verifier during 1987-90. Therefore, by their own reckoning first of those five junior officers had been promoted in the year 1987. However, this witness has also said in his evidence that in the seniority list published by the management he was shown below those five subsequently promoted Store Keepers. This seniority list is Ext. M-7 which was notified on 20-2-87. Then 20-2-87 was the latest date when the concerned workman could come to know of his supersession.

31. Admittedly, Sri N. M. Prasad, the officer bearer of the sponsoring Union, who also has conducted the case of the concerned workman before this Tribunal, was an office bearer of the recognised Union in the year 1985. He was a party to the decision noted in Ext. M-4 as would be clear from that document as well by the evidence of MW-2. So an office bearer of the sponsoring Union was in the know of the decision about the concerned workman taken in the year 1985. However, admittedly the industrial dispute was raised by the sponsoring Union in the year 1989. From Ext. M-6, which is reply of the management to the points raised by the sponsoring Union in the dispute, which was submitted to the Asstt. Labour Commissioner (C), Patna. From this it will appear that the points of the dispute were raised by the sponsoring Union by their letter dated 24-5-89. From the portion of the order of reference of the Ministry of Labour which, at the bottom, had mentioned the file no. of the conciliation proceeding (8/9/89-IR) as well failure report of the Asstt. Labour Commissioner (Central), Patna dated 29-1-90 also it will appear that the dispute was raised in the year 1989.

32. Therefore, it will appear that, if not in the year 1985 or 1986, the concerned workman must have come to know about his alleged supersession in February, 1987 when the seniority list was published. Obviously, the concerned workman and the sponsoring Union had waited for more than two years therefore to raise this dispute while, in the meantime, those or atleast some of those five Asstt. Store Keepers had not only been

promoted to the post of Store Keepers, but had also been further promoted to the post of Senior Store Keeper. Since this was a case of alleged supersession, the concerned workman or the sponsoring Union should have understood that delay in raising the dispute could warrant further promotion to the officers who had superseded the concerned workman, thereby complicating the matter further. Therefore, they were bound to raise the dispute at the earliest. But by waiting for more than two years, keeping in view the nature of the dispute, they had allowed the dispute to become over-stale.

33. In this regard decision by Hon'ble High Court at Patna reported in 1994 B.B.C.J. at 498 which related to C.W.J.C. No. 1250/88(R) (between Secretary, Barauni Telsodhak Mazdoor Union Vs. Presiding Officer, Central Govt. Industrial Tribunal No. 2 and others) and C.W.J.C. No. 1760/88(R) between M/s. Indian Oil Corporation Ltd. Vs. Union of India and others) his Lordship has been pleased to discuss a number of leading decisions, including those of the Hon'ble Supreme Court, on the point of staleness of reference, and observed as follow :

".....From the conspectus of decisions the law appear to be well settled that whereas no period of limitation was prescribed in respect of industrial claim, the Industrial Tribunal or Labour Court should discourage over-stale claim unless satisfactory explanation thereof was shown."

34. No material whatsoever has been brought on the record to explain this unusual delay in raising the dispute. This way I find that the dispute has become over-stale to grant any relief to the concerned workman, particularly in absence of the persons who could be adversely effected in case an award is given in favour of the concerned workman.

35. However, this Tribunal's inability in granting the relief to the concerned workman for the aforesaid two reasons may not stay the hands of the management in providing any sort of relief that they may provide to the concerned workman in accordance with rules in view of the observation of this Tribunal while answering issue no. 1. However, this is a point for considered of the management since the concerned workman is an employee of the company. I make it clear that this is not a directive, nor a part of the award.

36. In view of the aforesaid discussions the following is the award—

The action of the management in superseding the seniority/promotion of Nawal Kishore Prasad Singh was not justified. However, in view of the fact that the claim of the sponsoring Union has

become over-stale as also in view of the fact that the seniority of other workmen could not be adversely effected behind their back, I do not find that the concerned workman is entitled to, or can be given, any relief.

Under the circumstances of the case there would be no order as to the cost.

P. K. SINHA, Presiding Officer

नई दिल्ली, 6 जून, 1995

का. आ. 1821.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आंध्रा बैंक के प्रबन्धन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुसन्ध में निदिष्ट औद्योगिक विवाद में, औद्योगिक प्रधिकरण, मद्रास के पंचपद को प्रकाशित करता है, जो केन्द्रीय सरकार को 6-6-95 को प्राप्त हुआ था।

[संख्या एल-12012/110/92-आई.आर. (बी. 2)]

पी. जे. माइकल, डेस्क अधिकारी

New Delhi, the 6th June, 1995

S.O. 1821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Andhra Bank and their workmen, which was received by the Central Government on 6-6-1995.

[No. L-12012/110/92 IR(B-II)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU MADRAS.

Tuesday, the 21st day of March, 1995

PRESENT

THIRU K. PONNUSAMY, M.A.B.L.,
INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 70/1992

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workman and the Management of Andhra Bank, Madras).

BETWEEN

The General Secretary,
Andhra Bank Employees' Union,
168, Linghi Chetty Street,
Madras-600 001.

AND

The Assistant General Manager,
Andhra Bank,
Zonal Office,
265, T.T.K. Salai,
Madras-600 018.

REFERENCE :

Order No. L-12012/110/92-IR(B.II), dated 11-8-1992, Ministry of Labour, Government of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 7th day of March, 1995, upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru V. Vasudevan, authorised representative for the Workman and of Thiru B. Sateezchandran, Authorised Representative for the Management, and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This reference has been made for adjudication of the following issue :—

“Whether the action of the Management of Andhra Bank, Madras in imposing punishment of stoppage of two increments of Sh. K. Devaraj, Security Guard, is justified? If not, to what relief is the workman entitled to ?”

2. The claim of the petitioner briefly stated is as follows:

Devaraj, Security Guard of Andhra Bank was deputed for armed guards training for three days from 28-3-89 to 30-3-89, conducted at Recruitment Training Centre, II, CRPF, Avadi, alleged to have behaved in a virtuous and disorderly manner and thereby caused disrepute to the bank. He was deputed for armed guards training for 3 days from 28-3-89 to 30-3-89, sponsored by Canara Bank, Syndicate Bank, Andhra Bank, and Punjab & Sindh Bank, at recruitment training centre II CRPF, Avadi. During the Training Programme he raised doubts with regard to payment of overtime, halting allowance, etc., before Mr. B. Jagannath, Manager, Security. In spite of his doubts, being clarified by him he shouted at him, used unparliamentary language and also stated “I will see you. I will draw you to a Court of Law, do you think of yourself?”. His riotous and disorderly behaviour in the aforesaid manner is a misconduct as per Bi-Partite Settlement Clause 19.5(c). It has also brought disrepute to the bank. He was called for an explanation on the incident alleged to have happened and he replied by his letter dated 15th July 1989 denying the allegations. An Enquiry Officer was appointed by the respondent bank on 4-11-89 stating that no explanation was received from the employee. It has not been communicated

to the employee whether his reply has been considered or not. The Enquiry Officer proceeded with the enquiry and during the enquiry proceedings, the employee denied the charges. The Management cited two witnesses to be examined namely, Major B. Jagannath and Captain Allen Clerk of Canara Bank and Syndicate Bank respectively. But the Management chose to produce only one witness i.e. Major B. Jagannath. In his testimony before the Enquiry Officer, the witness narrated about the incident and during cross-examination, he admitted of having written a complaint to the respondent bank. The witness further stated that the complaint was jointly made by all the three organisers of the course. The witness deposed before the Enquiry Officer that the Complaint was sent by him on 1st April 1989. The defence requested the enquiry officer to provide the copy of the complaint based on which charges were alleged. The disciplinary authority also communicated to the employee that the charge sheet was issued based on certain documentary evidences. The Management of the respondent bank maintained before the Enquiry Officer that the copy of the complaint was not necessary for the enquiry as (i) it is a private and confidential letter to the highest authority of the bank (ii) the required necessary materials to provide the case have already been supplied to the enquiry officer by the disciplinary authority and the representative of the Management and (iii) the very fact that the management is not relying on the complaint, it is not necessary to produce the same. The Enquiry Officer ruled that no document is private and confidential and directed the Management to produce a copy of the complaint sent by Management witness, Major B. Jagannath. At the instance of the representative of the Management, the Enquiry Officer wrote to the Disciplinary Authority for the copy of the complaint. But, the disciplinary authority also maintained that the respondent did not rely upon the copy of the complaint to prove the charges and the copy was refused to the defence. The Enquiry Officer communicated the same to the employee as well as the defence representative through his letter dated 12-6-90. The defence objected the denial of the complaint as it handicapped the presentation of its case vide its letter dated 16-6-90 addressed to the Enquiry Officer. The other witnesses viz., Captain Allen Clark who is a signatory to the complaint was dropped by the prosecution. On 5-7-90 proceedings, the defence representative informed the enquiry officer of his inability to come to the enquiry. Instead of postponing the enquiry to a future date, the enquiry officer presumed that the defence had no case to present and concluded the enquiry. To quote the proceedings, the enquiry officer observed. Since the Defence representative informs his not coming for today's enquiry, I presume that the defence has no case to present.” Though the employee was present on the proceedings of 5-7-90, the enquiry officer concluded the enquiry without giving an opportunity to the

charged employee to present his case on the plea that the defence representative was not available. It was duly recorded in the proceedings that the charge sheeted employee's son died and the employee wanted permission to go. The permission was refused and the employee allegedly misbehaved with the organisers. The Enquiry Officer should have concluded that the Employee should have been permitted to attend the death of his son. But ironically the enquiry officer decided that the employee is guilty. The employee has got two sons and both are alive. The service rules require the Disciplinary Authority to give a hearing to the charge sheeted employee at the time of proposed punishment. Clause 19.12(a) of the Bi-partite Settlement dated 19-10-66 under the Chapter of disciplinary action and procedure prescribed he shall be given a hearing as regards the nature of the proposed punishment in case any charge is established against him". In the instant case the above mandatory provision was given a go-by by the Disciplinary Authority before imposing the punishment. It is well settled when the Disciplinary rules are violated, the principles of natural justice are also violated. The petitioner avers that the respondent made up his mind that the employee was guilty of the misconduct even prior to the issuance of the charge sheet. It is writ large that the issue was prejudged by the respondent bank as evidenced through the letter No. 680/22/191/13 dated 05-05-1989 of the respondent bank. The Disciplinary Authority imposed the punishment of stoppage of two increments, with cumulative effect on the employee without considering the objections raised by the employee and the Appellate Authority also mechanically disposed off the appeal and confirmed the punishment. The Appellate Authority did not consider the various points raised in the appeal of the employee but simply passed the order confirming the punishment without application of mind. The non-production of the complaint required by the defence non-consideration of the past records as required by the disciplinary rules, the denial of hearing by the Disciplinary Authority etc. remain unanswered by the Appellate Authority while disposing the appeal. Clause 19.5(c) of the major misconducts stipulated in the Bi-partite Settlement under Disciplinary procedure reads as "Drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank". The charges revelled against the employee are that the employee has committed a misconduct of riotous and disorderly behaviour". The Enquiry Officer in his findings stated that the usage of unparliamentary words was not at all proved. The Enquiry Officer in his findings stated that the riotous and disorderly behaviour was not brought out during the proceedings. Hence the enquiry officer has seriously erred in his findings that the employee is guilty of the charges. The punishment of stoppage of two increments with cumulative effect cannot be

held against the employee as the whole Enquiry Proceedings is defective as the findings of the enquiry officer is also perverse. The findings are based on basic error of facts and the actions of the disciplinary authority and appellate authority are in gross violation of principles of natural justice. The order of the respondent bank in imposing punishment of stoppage of two increments with cumulative effect on petitioner is illegal and unjustified. The mandatory provision of Clause 19.12(a) of the disciplinary rules regarding 'hearing' at the stage of imposing punishment by the disciplinary authority is overlooked by the respondent bank in respect of the employee and hence the employee was denied reasonable opportunity while imposing punishment. As per the prosecution, the son of the charge sheeted employee died during the period of training: When an employee seeks permission to attend his ailing son who eventually died, it is normally viewed sympathetically by anybody and the employee will be permitted to go. But the permission was refused by a rigid officer and ultimately this resulted in the punishment of the charge sheeted employee. The enquiry officer under normal circumstances and based on the records available should have concluded that the employee is not guilty. Therefore the findings of the enquiry officer is perverse. The usage of the unparliamentary words is neither proved by Management representative nor the Management witness. The appellate authority mechanically disposed off the appeal without application of his mind as to the points agitated by the employee in his appeal. The enquiry officer ceased to be an independent authority when he was guided by the disciplinary authority to shift from his ruling that the copy of the complainant was necessary for the enquiry.

3. The defence of the respondent briefly stated is as follows :

K. Devaraj, Armed Guard working at Currency chest, Madras was an ex-serviceman, and he was recruited in the bank as a Security Guard during the year 1984. While working at Currency Chest, he was deputed for an Armed Guard training programme for 3 days from 28-3-89 to 30-3-89 locally at Madras. The programme was organised by Canara Bank for the benefit of the employees of the south based banks. It is learnt that during the course of the programme, the employee has raised many un-warranted doubts which are un-warranted relating to payment of over-time, halting allowance etc., before one of the faculty members and course co-ordinator Mr. Jagannath, Manager (Security) Canarabank. In spite of the doubts being cleared by Mr. Jagannath, the employee is stated to have shouted at him using unparliamentary and abusive language. Mr. Jagannath lodged a Complaint with bank and in view of the alleged reprehensible behaviour, a charge sheet dated 15-9-89 was issued to the employee for his

riotous and disorderly behaviour. A domestic enquiry was conducted wherein a fair and reasonable opportunity was accorded to the employee to defend his case and the same was availed by him. Basing on the findings of the Enquiry Officer and taking into consideration the gravity of the misconduct, Disciplinary Authority awarded the penalty of stoppage of two increments for the years 1991 and 1992 with cumulative effect and the said punishment was confirmed by the Appellate Authority. Being a Security Guard, the behaviour and attitude of Mr. Devaraj was unbecoming and punishment awarded to him commensurate to the gravity of the misconduct. The enquiry was held in accordance with the principles of natural justice which is evidence from the enquiry proceedings and findings. However, if this Tribunal comes to the conclusion that the enquiry is not fair and proper, then the respondent herein craves leave of this Tribunal to let in evidence to establish their case. Immediately on receipt of the complaint, the Chief Manager of Zonal Office, Madras under whose territorial jurisdiction the employee was working called for the employee's explanation and on receipt of the reply forwarded the same to the Disciplinary Authority i.e. the Personnel Manager at Central Office, for further disposal in the matter. The petitioner was issued a charge-sheet dated 15-9-89 by the Disciplinary Authority specifying the misconduct attributable to the petitioner. The petitioner failed to submit his explanation to the charge sheet issued in spite of the specific direction issued to him and hence, with a view to elicit the true facts, a domestic enquiry was instituted by the Disciplinary Authority. The explanation given by the employee to the show cause notice issued cannot be construed as an explanation to the charge sheet. Even though two witnesses were cited, the discretion whether to produce the cited witnesses or not is left to the management representative and he cannot be compelled to produce the cited witnesses. The charge sheeted employee or his defence representative are expected to cross-examine and elicit evidence from the witness who deposed. As regards providing copy of the complaint, it would not be incumbent on the management Representative to produce a copy of the complaint. Non-submission of the complaint will in no way prejudice the case of the petitioner. Since the witness complainant himself was produced during the enquiry and the defence could cross-examine him in relation to the charges levelled against the petitioner. The charge stated in the charge-sheet are specific and clear and there is no ambiguity whatsoever. The contention of the petitioner that the non-supply of the copy of the complaint has handicapped the presentation of his case is incorrect and not tenable. The discretion whether to produce the witness or not rests with the management representative. It is true that the enquiry proceedings are closed by the Enquiry Officer in the absence of the Defence rep-

resentative. When a notice for enquiry is issued, it is incumbent on the part of the charge sheeted employee and his defence representative to attend the enquiry. Since the defence representative failed to attend the enquiry, the enquiry officer construed that there is no evidence to be produced by the evidence. A perusal of the proceedings dt. 5-7-90 on which date the charge-sheeted employee was present, will show that the charge sheeted employee has not raised any objection for closing the proceedings. It would have been open for the charge sheeted employee or his defence representative to seek re-opening of the case to produce their evidence, subsequent to the closure of the management case, which they have failed to do. It is incorrect to state that, no opportunity was given to chargesheeted employee to present his case. The Enquiry Officer cannot go beyond the charge-sheet and the contention of the petitioner that the Enquiry Officer ought to have made certain observations cannot be accepted. The contention of the petitioner that the mandatory provisions are given a go-by, by the Disciplinary Authority while awarding the punishment is incorrect. There is no violation whatsoever of the disciplinary rules or the principles of natural justice, as claimed by the petitioner. In terms of the provisions enumerated under the Bipartite Settlement, the petitioner was issued a show cause notice as to why punishment of stoppage of 2 increments with cumulative effect, should not be awarded to him and later the punishment was awarded by the Disciplinary Authority. The question of personal hearing will arise only in the case where dismissal is awarded as punishment. The averments made that the respondent had made up his mind with regard to the misconduct committed by the petitioner even before the charge-sheet is issued is incorrect and false. The Disciplinary Authority has taken the evidence adduced during the course of the enquiry, while awarding the punishments on the petitioner. It is incorrect to state that the competent authority have failed to take the submissions made by the petitioner, while awarding the penalty of disposing of the appeal. The authorities concerned have taken into consideration, the recorded evidence, and the submissions made by the petitioner, while disposing of the case and awarding the penalty. The Enquiry Officer in his findings clearly stated that the charge sheeted employee is guilty of riotous and disorderly behaviour at the Armed Guard's Training Programme based on the evidence that is let in. The punishment of stoppage of 2 increments is in cross-violation of the Principles of Natural justice is not tenable. The Disciplinary Authority has taken into consideration, the gravity of the misconduct alleged and established against the petitioner, in view of the seriousness of the charge & punishment appropriate to the gravity of the misconduct was awarded. The allegation in ground (b) is devoid of any merits. The complainant himself was produc-

ed as a witness and the defence was given sufficient opportunity to cross-examine him. The allegation made in ground d & e are without substance. Merely because the Enquiry Officer has made an observation with regard to the employee's son, that will not vitiate the enquiry and the findings of the Enquiry Officer which is totally based on evidence. The Enquiry Officer found that the charge sheeted employee was guilty of riotous and disorderly behaviour at the Armed Guards Training. The denial of copy of the complaint did not at all affect the case as the complainant himself appeared as witness in this case. For the reasons stated in the objections, it is prayed that this Tribunal may be pleased to reject the claim petition filed by the petitioner and confirm the order passed by the Disciplinary Authority vide his letter No. 666/20/NV/2933/dt. 7-12-90.

4. The Point for determination is :

“Whether the action of the Management of Andhra Bank, Madras in imposing the punishment of stoppage of two increments of Sh. K. Devaraj, Security Guard, is justified ? If not, to what relief is the workman entitled to ?”

5. The Issue : The petitioner is working as Security Guard of Andhra Bank. He was deputed for Armed Guard Training Programme for 3 days from 28-3-89 to 30-3-89, at Recruit Training Centre, CRPF, Avadi. Security Guard training was imparted by MW1 and 2 other Officers to the trainees sponsored by Canara Bank, Andhra Bank, Syndicate Bank, and Punjab and Sind bank. MW1 was the organiser. He was the Manager (Security) from 1981 to 1989 of Canara Bank. The petitioner and 3 others from Andhra Bank participated in the training. The Security Officer of Andhra Bank was not available and the responsibility of giving training to the petitioner and 3 others was entrusted to MW1. Training is a residential one. The trainees were given physical, theoretical, training and practical training in handling weapons fire arms, and firing practice. The petitioner raised issue regarding the over-time allowance, halting allowance etc. In spite of the doubts clarified by MW1, the petitioner was not satisfied and the other trainees were satisfied. The petitioner behaved riotously and disorderly and shouted against MW1 at a raised voice “I will see you, I will draw you to a Court of Law, what do you think yourself,” and used unparliamentary words and filthy language against MW1 in the presence of trainees, Security Officers and the Central Reserve Police Force and thereby caused disrespect to the Andhra Bank, & behaved in a manner unbecoming of an Ex-serviceman and Security Guard which necessitated MW1 to prefer a complaint Ex. M.3 to the Deputy General Manager, Andhra Bank, Zonal Office, TTK Salai, Madras for taking necessary action. Ex. M-1 is a 1436 GI 95—8.

copy of Ex. M.3. The defence of the petitioner is total denial of the incident. Ex. M.3 was written on 1-4-89 in which 3 officers have signed. The Zonal Office initiated disciplinary proceedings against the petitioner based on the complaint Ex. M.3 preferred by the aforesaid 3 officers and directed the Manager, Currency Chest, Madras to call for the explanation from the petitioner and forward the same to the Zonal Office to take disciplinary action is borne out by Ex. W-1. The Manager, Currency Chest, Andhra Bank branch directed the petitioner to submit his explanation immediately for forwarding the same to the Zonal Office, as to why disciplinary action should not be taken against him, is evidenced by Ex. W-2. The Zonal Office directed the petitioner to submit his explanation within 7 days as to why disciplinary action should not be initiated against him is made out by Ex. W-3.

6. The petitioner requested the Chief Manager to grant 15 days further time to submit his explanation, is evident from Ex. W-4. Petitioner submitted his explanation denying the charges levelled against him and lack of basic amenities, adequate water supply and poor quality of food supplied and the difficulties and inconvenience experienced by the trainees in the training camp is disclosed by Ex. W-5. Since the explanation of the petitioner was not satisfactory, he was charge sheeted for misconduct as per Clause 19.5(c) of the Bi-partite Settlement, is disclosed by Ex. W-6. The petitioner submitted his explanation that the Management prejudged that he is guilty of the charge levelled against him and has made up his mind to that effect that he has failed to keep open mind and the principles of natural justice are violated, rendering the entire disciplinary proceedings ineffective, that it is an attempt to punish him without proper findings is evident and the issue has been pre-judged, and the domestic enquiry instituted against him has become invalid and requested the Management to drop the proceedings initiated against him and to direct the Enquiry officer not to proceed with domestic enquiry is disclosed by Ex. W-7. The petitioner was directed to attend enquiry, is made out by Ex. W-8. Since the explanation submitted by the petitioner was unsatisfactory, and unconvincing domestic enquiry was ordered and conducted, is established by Ex. W-9. The enquiry Officer Sthuraman sent a letter to the petitioner since the Management is not relying upon the complaint preferred by MW1 to prove the charge levelled against the petitioner, the complaint need not be produced at the time of enquiry proceedings is evidenced by Ex. W-10. The petitioner's defence representative Sankareswaran wrote letter to the Enquiry Officer that in the absence of original complaint the petitioner is handicapped and prejudiced and requested the Enquiry Officer to address the Management to produce the original copy of it, is supported by Ex. W-11. Though, the petitioner and his defence representative were present

at Currency chest, at 3.00 p.m. on 23-2-90 the Enquiry could not be held and it was adjourned to 8-3-90, and the petitioner was directed to attend the enquiry at 3.00 p.m. on that date, is proved by Ex. W-12. The defence representative assisted the petitioner and cross-examined the Management witness, MW1 at length to defend his case and produce the witness on his side. In spite of several opportunities given and the enquiry was adjourned, the petitioner failed to produce the witness. The Management failed to produce the original complaint, is disclosed by Ex. W-13. Then Enquiry Officer has solely relied upon the evidence of MW1 and found the petitioner guilty of the charge levelled against him. The Enquiry Officer after analysing the evidence and consideration of documents and materials placed before him found that the petitioner is guilty of the charge levelled against him is supported by Ex. W-14.

7. The Management sent the Second Show Cause Notice to the petitioner to submit his explanation as to why the proposed punishment should not be imposed against him is established by Ex. W-15. The petitioner asked to grant further time to submit his explanation to Second Show Cause Notice is disclosed by Ex. W-16. The petitioner submitted his explanation reiterating the stand taken in his first explanation, is made out by Ex. W-17. Disciplinary authority after perusal of the evidence, the documents and the report submitted by the Enquiry Officer concurred with the finding of the Enquiry Officer and imposed the punishment of stoppage of 2 annual increments with cumulative effect for 1990 & 1991, is substantiated by Ex. W-18. The petitioner sent telegram to the Personnel Manager, Central Officer, Hyderabad to keep the order of punishment in abeyance, is evident from Ex. W-19. The telegram was followed by letter of the original of Ex. W-20. The petitioner preferred an appeal to Asstt. General Manager, the Appellate Authority against the punishment imposed by him against the disciplinary authority, is evidenced by Ex. W-21. His request to keep the order of punishment in abeyance is rejected by the Personnel Manager, is proved by Ex. W-22. The appeal was dismissed and the punishment was confirmed is established by Ex. W-24. He preferred an appeal Ex. W-23.

8. Ex. M. 2 is the Xerox copy of the Bipartite Settlement. This Tribunal decided the preliminary issue that the domestic enquiry conducted by the Enquiry Officer is not fair and proper. The Management was given an opportunity to prove the charges levelled against the petitioner. MW1 was examined in the domestic enquiry. MW1, the petitioner as WW1 and co-trainee as WW2 were examined and Exhibit M3 is marked after the finding given by this Tribunal that the domestic enquiry is not fair and proper. MW1 is an Ex-serviceman. He was Manager (Security) of Kanara

Bank from 1981—1989. Petitioner is also an ex-serviceman. MW1 has not seen the petitioner before training. There is no prior enmity between MW1 and petitioner WW1. Evidence of WW2 that the petitioner asked the permission of MW1 to see his ailing son and permission was rejected, is hear-say. WW2 does not personally know the alleged incident. At about 5.15 p.m. all the trainees except the petitioner left the recruitment Training Centre. II Central Reserve Police Force, Avadi in a vehicle bearing no. 3.10. It belongs to CRPF battalion and was hired. So, WW2 does not know the alleged incident. MW1 has no ulterior motive to depose falsely against the petitioner. Lacuna or mistake of non-production of original complaint was not filed in the domestic enquiry is now cured. Copy of the complaint was furnished to the petitioner. The document asked for should have been furnished to the party to enable him to cross-examine the Management witness, that such request is reasonable and necessary to comply with the principles of natural justice and production of the document sought for is mandatory, is held in 1971 LLJ p 322 Indian Tube Company Ltd., Vs. Pratap Misra. In that case it has been held that the domestic enquiry must be conducted. In the present case, enquiry was conducted and copy of the complaint was furnished to the petitioner. Now the original complaint Ex. M. 3 is filed, after giving a finding with regard to the fairness, and propriety of the domestic enquiry. Principle laid down in the afore-cited case cannot be disputed. The afore-cited case has no application to the facts of the present case since in that case original complaint was not filed while copy of the same was not furnished, to the delinquent and failure to supply the copy of the statement made by the complainant on the basis of which the disciplinary proceedings was initiated and order of dismissal is bad in law and is liable to be quashed since the delinquent must be given a reasonable opportunity to cross-examine the witness. In the case on hand, opportunity was given to the petitioner to cross-examine MW1 with regard to Ex. M. 3. So, the facts of the afore-cited case have no application to the present case, and as such that case is of no assistance to the petitioner. The incident is alleged to have taken place at 6.00 p.m. On 30-3-89 in the presence of 51 armed guards drawn from different banks and the CRPF Personnel. The petitioner used unparliamentary words which is stated as bad language in Ex. M. 3. The petitioner shouted at MW1 and challenged "I will see you. I will draw you to the Court of Law. What do you think of yourself? You did not allow me to go home all these 3 days to see my wife and children and on account of this my child is dead. I will drag you to Court."

9. The petitioner improperly behaved towards MW1. The petitioner left the training camp at about 5.15 p.m. on 30-3-89. The slight discrepancy regarding the time of the incident does not militate

against the case of the respondent. The petitioner at no point of time asked for permission of MW1 to go to see his ailing son and permission was not refused by MW1. The petitioner has not produced any scrap of paper or placed any material before this Tribunal or in domestic enquiry as to when his son was admitted in a private nursing home, and on what date he expired. The petitioner has not produced any medical certificate to prove when his son was admitted in a private nursing home and on what date he died. Even assuming that the son of the petitioner was admitted in a Nursing Home and he died. MW1 is not a proper and competent person to grant permission to the petitioner to go and see his ailing son, since the training is a residential one. The petitioner ought to have sought the permission of the Manager of the Bank to go and see his ailing son.

10. Nobody complained about the arrangements made for the stay of trainees and the quality of the food supplied to them. The trainees were attached to the mess of CRPF. Maximum best arrangements were made for the stay and food of the trainees. Petitioner was provided with plate and tumbler and food and water were supplied to the trainees. All the trainees were provided with boarding and lodging to their satisfaction. Even assuming that there was no adequate supply of water and the quality of the food supplied to the trainees was poor, that the trainees experienced difficulties and inconvenience, the petitioner ought to have made complaint to the Officer concerned and he has no business to shout at MW1 and use unparliamentary words against MW1. The petitioner ought to have asked clarification regarding the over-time allowance, the halting allowance from the Officer of the bank concerned. Unparliamentary words used against MW1 amounts to misconduct within the meaning of Clause 19.5(c) of Bipartite Settlement. The petitioner misbehaved towards MW1. The petitioner behaved in a riotous and disorderly manner towards MW1 and thereby caused disrespect to the bank. The petitioner shouted at high pitch to MW1 tantamounts to misconduct and disorderly behaviour. The charge levelled against the petitioner is proved by legal evidence of MW1 and Ex. M.3. The principles of natural justice are duly complied with in conducting the domestic enquiry. The petitioner was given full and reasonable opportunity to defend his case and to cross-examine the witnesses examined on the side of the Management. He participated in the domestic enquiry and he had the assistance of his defence representative. The DIG of CRPF Avadi, made arrangements for the stay and food of the trainees. Everybody appreciated the arrangements and the quality of the food supplied to the trainees. No body complained regarding the quality of food supplied to the trainees. Quality of the food was not poor. Transport facility to the training centre and vice versa was arranged for the Trainees. Best possible accommodation was made to the trainees

and were attached to the mess of the training battalion. The petitioner left the training centre at 5.15 p.m. The complaint M. 3 was not given at the instance of the officials of Andhra Bank. Incident took place in the presence of all the trainees. Officers and the men of CRPF. Having regard to the gravity of misconduct, the punishment of stoppage of 2 annual increments for the years 1991 and 1992 with cumulative effect to the petitioner cannot be considered as excessive and disproportionate. The punishment awarded to the petitioner is just, fair, proper and legal. The finding of the Enquiry Officer is not perverse. His finding is not biased. The charge levelled against the petitioner is properly proved. Evidence of MW1 is reliable and trustworthy. Since he has no axe to grind against the petitioner and there is no ill-feeling and enmity between MW1 and the petitioner. For the foregoing reasons, this Tribunal comes to the irresistible conclusion, that the action of the Andhra Bank in imposing the punishment of stoppage of 2 increments of Shri K. Devaraj, Security Guard is justified, First part of the point is found in the affirmative. Second part of the point does not arise for consideration.

In the result, an award is passed rejecting the claim of the petitioner. No costs.

Dated, this the 21st day of March, 1995

THIRU K. PONNUSAMY, Presiding Officer
WITNESSES EXAMINED

For Workmen :

W.W.1 : Thiru K. Devaraj.

W.W.2 : Thiru K. Dhanasamy.

For Management :

M.W.1 : Major B. Jagannath.

DOCUMENTS MARKED

For Workmen :

Ex. W-1|5-5-89 : Letter from Zonal Office of the Management -Bank to the Manager, Currency Chest, Andhra Bank, Madras (Xerox copy).

W-2|23-5-89 : Letter from the Management Bank to WW1 Thiru K. Devaraj (Xerox copy).

W-3|14-6-89 : Letter from the Management Bank to WW1 calling for explanation (Xerox copy).

W-4|27-6-89 : Copy of letter seeking time to submit his explanation (Xerox copy).

W-5|15-7-89 : Reply by WW1 to Ex. W-3.

W-6|2-9-89 : Charge sheet issued to WW1.

W-7|20-2-90 : Letter from Disciplinary Authority to WW1.

W-8|2-3-90 : —do—

Ex. W-9| : Proceedings of the Enquiry Officer (copy).

W-10|12-6-90 : Letter from the Enquiry Officer to WW1 advising him to be present for the enquiry to be held on 20-6-90 (copy).

W-11|16-6-90 : Letter from Petitioner-Union to the Enquiry Officer requesting to postpone the enquiry to some other date (Copy)

W-12|26-2-90 : Letter from the Enquiry Officer to the Personnel Officer, Andhra Bank, Zonal Office, Madras (copy).

W-13| : Defence Submission (copy).

W-14|27-9-90 : Findings of the Enquiry Officer (copy).

W-15|22-10-90 : Letter from Disciplinary Authority to WW1 proposing punishment of stoppage of two increments.

W-16|28-11-90 : Letter from WW1 seeking time to submit his representation.

W-17|10-12-90 : Reply by WW1 to Ex. W-15.

W-18|7-12-90 : Order of Punishment issued to WW1.

W-19| : Certified true copy of telegram.

W-20|2-1-91 : Letter from WW1 to the Disciplinary Authority praying to permit him to represent the Appellate Authority.

W-21|7-1-91 : Letter from WW1 to the Appellate Authority.

W-22|9-1-91 : Letter from Disciplinary Authority to WW1.

W-23|24-1-91 : Appeal preferred by WW1 against the punishment of stoppage of two annual increments to him.

W-24|22-3-91 : Order of Appellate Authority confirming the punishment issued to WW1.

For Management :

Ex. M. 1|1-4-89 : Letter from Tvl. Major Jagannath, B. Ravi and Captain Allan Clerk to the Management-Bank (Xerox copy).

M-2 : Extract of Clause 19-5. (c) of Bipartite Settlement.

M-3|1-4-89 : Original of Ex. M.1.

नई दिल्ली, 7 जून, 1995

का.प्र. 1822.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मथुरा रिफाइनरी, इंडियन आयल के प्रबन्धन के संबंध में निविष्ट औद्योगिक विवाद में, उनके कर्मचारियों के बीच, अनुबन्ध में निविष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 6-6-95 को प्राप्त हुआ था।

[संख्या-एल-30012/36/91-आई आर (विविध)/आई आर (कोल-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 7th June, 1995

S.O. 1822.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mathura Refinery, Indian Oil and their workmen, which was received by the Central Government on 6-6-1995.

[No. L-30012/36/91-IR(MISC)/IR(Coal-1)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 52/92

In the matter of dispute between :

The General Secretary, Indian Oil Mathura Refinery Karamchari Sangh, Madras Refinery, Mathura (UP)-281001.

Versus

The Executive Director, Mathura Refinery, Mathura-281001.

APPEARANCES :

Shri A. K. Gupta in person.
Shri J. Buther for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-30012/36/91-IR(Misc) dated 15-6-92 has referred the following industrial dispute to this Tribunal for adjudication :

“Whether the Chief Production Manager, Mathura Refinery, Mathura was justified in not granting consequential benefit arising out of grant of seniority and due promotion w.e.f. 30-6-88 to Shri A. K. Gupta,

Operator Grade B. If not what relief the workman is entitled to?"

2. After the conclusion of the case parties settled the dispute and filed settlement Ex M-1. Statement of the parties were recorded and the parties stated that the matter has since been settled vide statement dated 3-5-95 and contains the terms of reference. In view of their statements no dispute exists and the matter has been settled. Statement Annexure A shall form part of this award. Parties shall bear their own costs and shall remain bound by the terms of the settlement.

GANPATI SHARMA, Presiding Officer

31st May, 1995.

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CGIT, NEW DELHI

I. D. NO. 52 OF 1992

In the matter of :

Shri A. K. Gupta

WORKMAN

VERSUS

Indian Oil Corporation Ltd.
Mathura Refinery, Mathura .. MANAGEMENT
JOINT APPLICATION OF THE PARTIES FOR
PASSING AWARD IN TERMS OF SETTLEMENT
DATED

RESPECTFULLY SUBMITTED :

1. That the aforesaid case is now fixed on 15-5-95 for filing of written argument by the Management.

2. That the parties herein have entered into a settlement dated 03rd May, 1995. A copy of the settlement is annexed as Annexure-'A' to this application. The dispute between the parties stand resolved under the settlement.

PRAYER

The parties herein, therefore pray to the Hon'ble Court to pass award in terms of the settlement dated 03rd May, 1995.

Prayed accordingly,

Sd/- (T. Balakrishna)
For & on behalf of
the Management

Date :
New Delhi :

Sd/- (A. K. Gupta)
Workman/Representative
of the Workman

MEMORANDUM OF SETTLEMENT
FORM 'H'
(Rule 58)

Names of the Parties :

Representing employer (s) : Indian Oil Corporation Ltd. Mathura Refinery, Mathura (U.P.)

Representing workman : A. K. Gupta.

Whereas a reference under Sec. 10 of the I.D. Act was made to the Industrial Tribunal-cum-Labour Court (Central), New Delhi and the case was registered as I.D. No. 52/1992, the Workman concerned Shri A. K. Gupta has claimed monetary benefits arising out of seniority and promotion; the Management has taken up its defence in its written statement. Whereas the parties herein have negotiated and have resolved to amicably settled the issues involved in the said case. Now the parties herein have reached a settlement and the terms and conditions of the settlement are as follows :

1. That the workman Shri A. K. Gupta has agreed to received Rs. 2,448/- as full and final settlement of all his claim;
2. That it is agreed by the parties to move a joint application in the CGIT, New Delhi where the Industrial Dispute No. 52 of 1992 is pending, requesting the I.D. Tribunal to pass award in terms of this settlement;
3. That the Workman Shri A. K. Gupta has agreed that no dispute/claim would be raised by him or on his behalf in respect of the matter settled herein.

This settlement is arrived on 03rd day of May, 1995, at Mathura.

T. BALAKRISHNA, Personnel & Admn. Manager

Signature of the Representative
of the Management

Indian Oil Corporation Ltd.
Mathura Refinery, Mathura-5

A. K. GUPTA

Signature of the Workman/
Representative of the Workman

Witnesses :

1. L. D. JOSHI, President
IOMRKS, Mathura
2. K. S. TOMAR, SPAO-MR

Dated : 5th May, 1995

RECEIPT

Received a cheque No. 622856 dated 5th May, 1995 of State Bank of India, Mathura Refinery Project Branch, Mathura for Rs. 2,448/- (Rs. Two thousand four hundred forty eight only) favouring A K. Gupta from Indian Oil Corporation Ltd., Mathura Refinery, Mathura towards full and final satisfaction of my claim raised in I.D. No. 52 of 1992 (A. K. Gupta Vs. IOCL-MR) pending with CGIT-New Delhi.

A. K. GUPTA, Operator-'A'
Emp. No. 76356

Mathura Refinery, Mathura-281005

नई दिल्ली, 7 जून, 1995

का.प्र. 1323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान पेट्रोलियम कारपोरेशन लिमि. के प्रबन्धन के संबंध निपोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 6-6-95 को प्राप्त हुआ था।

[संख्या एन-20012/18/93-आईआर (विविध)/आईआर (कोल-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 7th June, 1995

S.O. 1823.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Ltd. and their workmen, which was received by the Central Government on 6-6-1995.

[No. L-30012/18/93-1R (Vividh)/IR (Coal-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL

TRIBUNAL, NEW DELHI

I. D. No. 1/95

In the matter of dispute between :

Secretary,

Petroleum Workers Union,
C-160, Sarvodaya Enclave,
New Delhi-110017.

Versus

Chief Regional Manager,
Hindustan Petroleum Corporation Ltd.,
11th Floor, Tower-I,
Jiwan Bharti Building,
Connaught Place, New Delhi-1.

APPEARANCES :

Shri K. L. Chhabra for the Union.

Shri S. H. Mehdi for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-30012/18/93-I.R. (Vividh) (Coal-I) dated 23-11-94 has referred the following Industrial Dispute to this Tribunal for adjudication :

“Whether the action of the management of Hindustan Petroleum Corporation Ltd., in effecting proportionate wage cut of the workman of LPG Plant, Shakurbasti, New Delhi for the period 1-3-91 to 31-3-91 during the month of April, 1991 on the ground of alleged go-slow during the afore-said period by Shri Satya Dev Prasad and

41 others as mentioned in the enclosed Annexure is justified ? If not, to what relief the workmen are entitled ?”

2. The parties appeared on 7-3-95 both the representative for the parties stated that settlement has been arrived at but the settlement was filed on 30-5-95. Statements of the parties were recorded in which they stated that the matter has been settled vide settlement Ex. M1 and parties shall remain bound by the said settlement and the award may be given accordingly. In view of the statements of the parties and the settlement Ex. M1 the dispute stands settled. Parties shall remain bound by the terms of Ex. M1 and shall bear their own costs.

GANPATI SHARMA, Presiding Officer

30th May, 1995.

MINUTES OF UNDERSTANDING REACHED
WITH THE WORKMEN OF SHAKURBASTI LPG
PLANT ON 4-9-1993

PRESENT :

Representative of the Management : Shri Z.
Pillai, Manager, P&A GMO (NZ).

Representative of the Workmen : Shri K. L.
Chhabra

The workmen of Shakurbasti LPG Plant through its Union (PWU, Delhi) raised an Industrial dispute before RLC (C), Delhi regarding their deduction of wages for the period from 1-1-1991 to 28-2-1991 as a result of go-slow and production loss at the plant and also for the differential wages (Normal wages subsistence allowance, to three employees namely S/Shri Mahabir Singh, Radhey Lal Meena and Raj Kumar who were suspended from duty in Feb., 1991. The Conciliation proceedings ended in failure Despite the same, the workmen continued to raise the issue with the Management and they have been arguing that they will maintain healthy industrial relations in the plant.

The issue once again discussed on 4-9-93 on the eve of shifting of activity of Shakurbasti Plant to Bahadurgarh Plant by the parties and after discussions it is agreed as under :

- (i) Basis the workmen assurance that they will make efforts to make up production loss at Bahadurgarh Plant caused during the go-slow period and as a gesture of goodwill by the Management in order to create healthy industrial relations climate (i) the wages deducted from each individual workmen will be restored in due course.
- (ii) The differential wages between normal wages minus subsistence allowance to S/Shri Mahabir Singh, Radhey Lal Meena and Raj Kumar will be paid, without creating any precedence whatsoever.

- (ii) The workmen agreed to cooperate with Management for Maintaining healthy industrial relations and for improved productivity.

AWARD

Dated : May 30, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-17012/102/90-IR(B-2) dated 7-11-1990, for adjudication of the following industrial dispute :

SCHEDULE

"Whether the action of the management of United India Insurance Company Limited, Satna (M.P.) in terminating the services of Sh. Nand Kishore Burman, Ex-Sub-staff w.e.f. 3-5-85 is justified ?"

2. The case of the workman is that he was appointed as Sub-staff in the Branch of the United India Insurance Company on 1-5-1984 and the workman served the Company on daily wages upto 3-5-85; that the workman has served continuously for more than one year i.e. for 303 days and the workman on account of continuous uninterrupted service of more than a year is entitled for the permanent post under Section 25B of the I.D. Act, that the management has terminated his services without giving him notice and compensation and that the management has not provided opportunity although new staff was appointed after the termination of the workman. The workman has prayed for reinstatement with full back wages.

3. The case of the management is that the workman has worked only for 199 days and he was appointed on daily wages for cleaning the room and giving water; that the workman has not worked continuously and he was a casual employee on day to day basis. The workman is not entitled to the benefits of Section 25F of the I.D. Act.

4. It is held by the hon'ble High Court in M.P. No. 4908 of 1989 that the workman engaged on daily wages only did not come within the meaning of Sections 2(oo) & 2(bb) of the I.D. Act and as they are not covered by the definitions of retrenchment such workmen are not entitled for the benefit of Section 25H of the I.D. Act.

5. Workmen was engaged on daily basis, there is no evidence to show that the workman has worked continuously on the permanent post. Consequently, workman is not entitled for the benefit of Section 25G & H of the I.D. Act.

6. It is held that the termination of the services of the workman w.e.f. 3-5-85 is just and proper and he is not entitled to any relief. Reference is answered in favour of the management. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 7 जून, 1995

का.आ. 1825 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार रेटेंट बैंक आरु वीकानेर मंड अजपुर के प्रबन्धन के संबंध नियोजकों और उनके कार्यकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में

नई दिल्ली, 7 जून, 1995

का.आ. 1824 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार यूनाइटेड इंडिया इश्योरिंग कं. लि. के प्रबन्धन के संबंध नियोजकों और उनके कार्यकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचरट को प्रकाशित करने, है जो केन्द्रीय सरकार की 7-11-95 को प्राप्त हुआ था।

[संख्या एन-17012/102/90/आई आर बी.-2]

पी.जे. माइकल, डेस्क अधिकारी

New Delhi, the 6th June, 1995

S.O. 1824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of United India Ins. Co. Ltd. and their workmen, which was received by the Central Government on 7-6-1995.

[No. L-17012/102/90-IR(B-II)]

P. J. MICHAEL, Desk Officer
ANNEXUREIN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,

JABALPUR (M.P.)

CASE REF. NO. CGIT/LC/(R)(214)/1990

BETWEEN :

Shri Nand Kishore Burman C/o Shri Dilip Kumar
Singh, Advocate, Swamy Chouraha, Mukh-
tiyar Ganj, Satna (M.P.).

AND

The Branch Manager, United India Insurance Co.
Ltd., Satna (M.P.).

PRESIDED IN :

By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman : Shri Birendra Singh Bisen, Advocate.

For Management : Shri K. L. Raj, Advocate.

INDUSTRY : Insurance DISTRICT : Satna (M.P.)

केन्द्रीय सरकार औद्योगिक प्रतिक्रिया, धनबाद-I के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-6-95 को प्राप्त हुआ था।

[संख्या जल-11016/2/88-पं-III (ग.)]
पी.जे. माइकल, डेस्क अधिकारी

New Delhi, the 7th June, 1995

S.O. 1825.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Dhanbad-I as should in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Bikaner & Jaipur and their workmen, which was received by the Central Government on the 6-6-95.

[No. Z-11016/2/88-D-III(A)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of references under section 10(1) (d) (2-A) of the Industrial Disputes Act, 1947.

Reference No. 109 of 1991.

(Ministry's Order No. Z-11016/2/88 D.III(A)|IR.B. III dated 29-10-1991).

PARTIES :

Employers in relation to the management of State Bank of Bikaner and Jaipur.

AND

Their Workmen.

ANALOGOUSLY ALONGWITH

Reference No. 131 of 1991

(Ministry's Order No. Z-11016/2/88 D.III(A)|IR.B. III dated 12-11-1991)

PARTIES :

Employers in relation to the management of State Bank of Bikaner and Jaipur.

AND

Their Workmen.

PRESENT :

Shri P. K. Sinha, Presiding Officer.

APPEARANCES.

For the Employers.—Shri B. K. Mukherjee, Advocate.

For the Workmen.—Shri B. Joshi, Advocate.

STATE : Bihar. INDUSTRY : Banking.

Dated, the 26th May, 1995.

AWARD

Reference No. 109 of 1991.

By Order No. Z-11016/2/88D.III(A)|IR.B.III, dated, the 29th October, 1991, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of State Bank of Bikaner and Jaipur in terminating the services of the under-mentioned workmen with effect from the date shown against their name, is legal and justified ? If not, to what relief the workmen are entitled to ?”

Sl. No.	Name of the workman	Date of termination.
1.	Shri Girdhar Gopal	01-02-1979
2.	Shri Manindra Kumar Gupta	22-11-1981
3.	Shri Vinod Kumar Singh	14-07-1982
4.	Shri Rajiv Ranjan	13-08-1984
5.	Miss Tapoti Sarkar	23-12-1982
6.	Shri Raghubansh Kumar Singh	03-07-1980
7.	Shri Amit Sinha	04-09-1982
8.	Shri Girdhar Gopal Tiwari	10-05-1984

Reference No. 131 of 1991.

By Order No. Z-11016/2/88-D. III(A)|IR. B.III, dated, the 12th November, 1991, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of State Bank of Bikaner and Jaipur in terminating the services of the under-mentioned workmen with effect from the date shown against their name is legal and justified ? If not, to what relief the workmen are entitled to ?”

Sl. No.	Name of the workmen.	Date of termination
1.	Shri Bishwajit Das	25-3-87
2.	Shri Ashok Kumar Das	6-7-80
3.	Shri Gokul Kishore Roy Chowdhary	31-12-81
4.	Shri Man Mohan Krishna Verma	15-2-84
5.	Shri Shakti Kant Dubey	11-11-81
6.	Shri Ashraf Ziyauddin	28-7-83

2. At the request of the parties both the aforesaid cases have been heard analogously and this award shall decide both the References. It may be mentioned that in Reference No. 109 of 1991 the following

workmen did not appear, nor any written statement was filed on their behalf :

- (1) Shri Girdhar Gopal,
- (2) Shri Manindra Kumar Gupta, and
- (3) Shri Rajiv Ranjan.

Likewise in Reference No. 131 of 1991 the following workmen did not appear nor any written statement on their behalf was filed :

- (1) Shri Bishwajit Das,
- (2) Shri Gokul Kishore Roy Chowdhary, and
- (3) Shri Man Mohan Krishan Verma.

Therefore the award in these two References shall be applicable only to those workmen who have appeared and filed their written statement. In other words, this award shall not be applicable to those workmen who did not appear and on whose behalf no written statement was filed.

3. In Reference No. 109 of 1991 in which five workmen have appeared, they filed joint written statement. They have given following statements of their joining in the service of the Bank and the date of termination of their service, which are as follows :

Name	Date of appointment	Date of termination
Shri Giridhar Gopal Tiwari	20-2-84	9-5-84
Sri Vinod Kumar Singh	26-4-82	14-7-82
Miss Tapoti Sarkar	4-10-82	23-12-82
Sri Raghubansh Kumar Singh	15-4-80	3-7-80
Sri Amit Sinha	16-6-80	3-9-82

Out of the aforesaid the first two have claimed to have been appointed as Clerk-cum-Cashier whereas the rest three have claimed that they had been appointed on the post of Clerk. The aforesaid informations about the workmen in Reference No. 131 of 1991 are as follows :—

Sri Ashok Kumar Das	18-4-80	6-7-80
Sri Shakti Kant Dubey	24-8-81	11-11-81
Sri Ashraf Ziyauddin	10-5-83	28-7-83

In both the cases it has been claimed that the workmen were appointed against permanent vacancies on permanent posts though the management wrongly described them as temporary workmen. Since the written statement in both the cases, on the point of submissions, are almost the same, the gist of their written statements is being mentioned hereinafter.

4. The workmen have claimed that they were selected after holding of proper test and the management was fully satisfied with the performance but despite the fact that the workmen were competent the management terminated their services on account of policy decision of the management to recruit workmen, describing them as temporary hands, and thereafter terminating their services before completion of 90 days of attendance so that the management may not have to make them permanent.

5. Before terminating the services of the workmen the management did not prepare and publish seniority list of clerks-cum-cashier as required under Rule 77 of the Industrial Disputes (Central) Rule, 1957 hereinafter referred to as 1957 Rules).

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6. It has further been averred that the principles of "last come, first go" as provided under Sec. 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was not followed before terminating their service. It is also alleged while terminating their services the management retained such workmen who were junior to the concerned workmen. The management also did not give 14 days notice or wages in lieu thereof, before terminating their services, as required under Para 522(4) of the Shastri Award. It has also been mentioned that after terminating their services fresh hands were appointed, but no notice was given under registered cover to the workmen as provided under Rule 78 of the 1957 Rules.

7. An industrial dispute thereafter was initiated which failed and a failure report was sent to the Government of India. The Government refused to dispute for adjudication on which the concerned workman filed Writ Petition being CWJC No. 3052/88 before the Hon'ble High Court. The Hon'ble Court by judgement and order dated 13-9-91 (Ext. W-4) directed the Central Government to refer the dispute for adjudication after which the present two Referentes were made.

8. It has been claimed that the management did not give notice to the retrenched employees individually under registered post as was required under Rule 78 of the 1957 Rules, before appointing fresh hands.

9. For the aforesaid reasons, it has been claimed that the action of the management in terminating the services of the concerned workmen was illegal and void.

10. In the written statement the workmen have given a number of References decided by the Central Govt. Industrial Tribunal at Kanpur stating that those were decided in favour of the workmen, similarly situated.

11. It has been claimed to be unfair labour practice for the management to appoint workmen for short duration only. It has been claimed that termination of their services amounted to retrenchment as defined under Sec. 2(oo) of the Act. Therefore, non-compliance of Rules 77 and 78 of the 1957 Rules as well non-observance of Sections 25G and 25H of the Act made their retrenchment illegal.

12. A prayer has been made to set aside the termination of the service of the workman and to direct the management for their reinstatement with full back wages and all consequential benefits.

13. The management also appeared and filed its written statement in both the cases. In both the cases, on a number of points the management has made similar pleadings, hence those pleadings are mentioned below, in short, which are siminalr —

Besides technical objections it has been stated that there was no dispute which could form basis of a reference. It has been submitted that at the time when the workmen were temporarily employed for a specific period they knew well that on the expiry of the stipulated period they shall have no right to claim benefit nor shall hold lien over the posts. It has been admitted that the concerned workmen were

appointed by the management, but with the submission that they were appointed in ad-hoc vacancies but not to do any regular duty. The contract of their services came to end after expiry of the stipulated period. It has been argued that such automatic cessation of service does not constitute retrenchment as that has been excluded from the definition of "retrenchment" under provision of Section 2(oo) (bb) of the Act.

14. It has also been submitted that the workmen had not completed 240 days of service in a calendar year, within the meaning of Section 25-B of the Act, hence are not entitled to any relief.

15. It has been argued that unless the concerned workmen proved that they were wrongly retrenched, they could not seek relief by making Sections 25-G and 25-H of the Act applicable.

16. It has again been submitted in para 12 of the written statement that the concerned workmen were never appointed on regular basis but only for a specific period. For regular appointment there is a set procedure laid down which provides for recruitment through Banking Service Recruitment Board.

17. Thereafter the management gave specific reply to the averments made in the written statement of the workmen. In Reference No. 109 of 1991 it has been submitted by the management that the workmen should disclose particular branch of the Bank where they were appointed.

18. It has further been submitted that the workman Raghubansh Kumar Singh was appointed for 30 days with effect from 15-4-80 and, thereafter, twice his service was extended for 30 days more on each occasion.

19. In Reference No. 131 of 1991 it has been submitted that the workman Ashok Kumar Das was appointed as Leave Substitute in place of Y. Kumar, for a period of 30 days with effect from 18-4-80 which was twice extended for 30 days and 20 days, respectively.

20. In both the written statement it has thereafter been mentioned that the Bank had appointed temporary hands to work as Leave Substitutes and to cope up with temporary increase in work. It has been contended that the concerned workman had put in merely 80 days of temporary service whereas Raghubansh Kumar Singh had put in 90 days of temporary service within one calendar year. It has been denied that any workman was appointed against permanent post.

21. The management has denied the statement that the workmen were appointed after proper test stating that for ad-hoc temporary appointment no recruitment test was prescribed.

22. It has been stated that since it was not a case of retrenchment the list of retrenched hands was not required to be prepared under Rule 77 of 1957 Rules. On the same ground that termination of service of the concerned workman did not come under the definition of retrenchment, the management has denied that the provisions of Sec. 25-G or 25-H of the Act were attracted. It has been submitted that para

522(4) of the Sastry Award was also not violated because in the letter of appointment it was mentioned that on a particular date their services would automatically end. It has been argued that Rule 78 of 1957 Rules was not violated because it was not a case of retrenchment. It has been denied that the management had appointed any fresh hands.

23. Likewise other allegations of the concerned workmen made in their written statement have been denied.

24. Thereafter the workmen also filed their rejoinder to the written statement of the management, denying the allegations.

25. From the pleadings of the parties it is clear that the management has not denied that it had appointed the aforesaid concerned workmen for a particular period.

As a matter of fact in its written statement the management has admitted that all the workmen were appointed for a period of 80 days only except Raghubansh Kumar Singh who was appointed for a period of 90 days. Therefore the documentary and oral evidence placed on behalf of the concerned workmen and the Management to prove the period of their appointment need not be discussed in view of the aforesaid admission by the management.

26. The main defence that the management has taken is that since the provision under Sec. 2(oo)(bb) does not make termination of a service made for limited period to come under purview of "retrenchment", the management was not needed to conform to the provisions of Secs. 25-G and 25-H of the Act or to the Rules 77 and 78 of 1957 Rules. It is fact that the evidence produced by the workmen such as in Ext. W-1 series, as well in the evidence of the concerned workmen prove, that they had worked for a short period only. In Ext. W-1 series which are the appointment letters to the workmen and Ext. M-1 series which are also documents of the same nature, it would appear that they were offered appointment for a certain given period.

27. But the management is in wrong premises in contending that by virtue of provision of Sec. 2(oo)(bb) such appointment on temporary basis and for a particular given period, excludes the termination from the mischief of definition of 'retrenchment'. The reason is very simple. The provision in Sec. 2(oo)(bb) of the Act was inserted in the Act by Act, 49 of 1984. This cannot be given retrospective effect. Admittedly the concerned workmen were terminated from service prior to this provision was brought on the statute book. Before the insertion of this provision the law was that a termination of service of a workman was retrenchment excluding the three exceptions provided under Sec. 2(oo) of the Act. It then did not make any distinction on the ground of length of service. Therefore it has to be held that the concerned workmen, notwithstanding the terms of their appointment given in the appointment letters, have to be deemed to have been retrenched from service when on the expiry of a certain period their service was terminated by the management.

28. It is true that the provision of Sec. 25-F will not apply in the cases of these workmen since they had not been in service for one year. But the provision of Sec. 25-G and 25-H of the Act are not only independent of Sec. 25-F of the Act, but also of each other. These provisions, as also provisions contained under Rules 77 and 78 of 1957 Rules had to be complied with in the case of a retrenchment and any failure to do so would make the retrenchment illegal.

29. The main ground taken by the management was that the management was not bound to comply with these provisions since the termination of service of the concerned workmen did not sit within the four walls of the definition of term 'retrenchment'. But I have already held that prior to the insertion of provision of Sec. 2(oo)(bb) into the Act every such termination of service did amount to retrenchment.

30. In their written statement the management has stated at one place that after their retrenchment no fresh hands were appointed. But for this the management has brought nothing on the record. Even its only witness, Anandilal Mathur did not claim that in course of his evidence. As a matter of fact he submitted that regular appointment in the Bank's services were to be made by the Banking Service Recruitment Board for which a written test and interview were held. But he also admitted that the Branch Manager of the Bank was authorised to make temporary appointment due to exigencies of the circumstances, after obtaining consent from the senior authorities. He also admitted that though recently that system had been done away with, but it was in practice at the time the temporary appointments of the concerned workmen were made. Therefore it is clear from this evidence that such appointments were made during the period these workmen have claimed they were so appointed.

31. W.W. 1 is Ashraf Ziyauddin. He has stated as to how he was appointed in the post and how he had been doing regular works of the Bank. He submitted that he was subsequently posted as Asstt. Cashier in the Bank. According to his evidence he was stopped from working with effect from 28-7-83. He also asserted that while he was working, one Alok Mitra was appointed and after he was stopped from working, Alok Mitra started functioning as Asstt. Cashier. He asserted that subsequently also several such appointments were made. During cross-examination also he asserted that Alok Mitra was appointed in a manner similar to his appointment. He also named four more persons who were appointed after his termination.

32. W.W.2 is the concerned workman Mrs Tapoti Roychoudhary. She has given similar evidence with regard to her appointment and has also asserted that after she was stopped from working, one Tarun Ghosh was placed to do her work, who was appointed by the management only ten days before her termination. She also claimed that thereafter also the management had made several appointments for temporary period. The management in cross-examination did not even suggest that this claim of the witness was wrong.

33. W.W.3 Girdhar Gopal Tiwary is a concerned workman who has said that all the workmen were appointed after written or oral test against permanent posts. He also asserted that the workmen were removed after working for 80 days. However, this particular point has been admitted by the management also, as already seen. This witness also asserted that after termination of service of the concerned workmen other persons were appointed in their place.

34. I have already stated that the management's only witness has not even claimed in his evidence that no such subsequent appointments were made, but has said that during that period the Managers of the Bank were entitled to make such appointments. However, in cross-examination he has denied such a suggestion. But this witness admitted, in answering to a query of the Tribunal that he was not aware of the stand of the Bank with regard to the concerned workmen in these two Reference cases except the cases of Raghubansh Kumar Singh and Ashok Kumar Das.

35. Therefore, there is cogent evidence to believe that after retrenchment of the concerned workmen, or after their appointment in the Bank, further appointments had been made and the junior appointees were retained. Moreover, it is not possible to admit that since after retrenchment of these workmen, all these years no vacancy in those posts has occurred in the Bank or that no appointment since then to those posts has been made.

36. In Ext. W-4, which is decision of Hon'ble High Court at Patna in favour of the concerned workmen, in which Central Government was directed to make a reference of the dispute to the Industrial Tribunal, their Lordships have been pleased to discuss the order of the Conciliation Officer, apparently with approval, in which the Conciliation Officer had held that the management had failed to follow the law as laid down under Sec. 25-G and 25-H of the Act and under Rules 77 and 78 of the 1957 Rules. The Conciliation Officer also had found that several new appointments were made without following the provisions of Sec. 25-G and 25-H of the Act.

37. It will also appear from para 16 of this judgment that the management, in order to cover up the latches, had put up a plea that they were going to give one time opportunity for permanent absorption to the temporary employees. It was also noted that this step of the management was an afterthought after long lapse of time. It was also noted that by taking such steps the mistakes already committed by the management could not be rectified. It was also noted that since several years had passed the workman could not go anywhere due to over age and change in the criteria of educational qualification.

38. In this regard attention may be had to the documents in Ext. W-3 series in which certificates have been granted to some of the workmen, seven in number, in which the officials of the Bank had eulogised the service of these workmen while working in the Bank in appreciative tone.

39. Therefore I hold that all the concerned workmen had worked for the concerned Bank and were retrenched from service without conforming to the

provisions of the Act and 1957 Rules, as seen beforehand. This makes the termination of their service to be improper.

40. The learned Counsel for the management has drawn my attention towards Ext. M-2 which is an office circular dated 4-6-91 giving one time opportunity for absorption of ex-temporary employees in the clerical grade cadre. But this was open for all the ex-temporary employees who had put in minimum of 90 days of temporary service and who were within the age group of 18 to 24 years. Definitely this circular could not give any relief to the concerned workmen because, even according to reckoning of the management, all except one of the concerned workmen had put in only 80 days of service. The age limit might have also precluded certain workmen to be eligible to avail that opportunity. Therefore this circular is not at all helpful to the concerned workmen.

41. Both sides have filed a number of decisions by the Central Administrative Tribunals relating to the cases of similar nature. In some of those decisions the action of the management has been held to be justified, while in some of the decisions it was held to be illegal and the workmen were ordered to be reinstated into service with back wages. Even in Ext. W-4, the order of the Hon'ble High Court at Patna it has been noted that several identical disputes had been referred for adjudication to the Industrial Tribunals between same Bank and its Workmen at Kanpur. It was also noted that an award in favour of the workmen dated 8-8-87 was affirmed by the Hon'ble High Court at Allahabad against which the Bank had preferred an Appeal before the Hon'ble Supreme Court, but the Hon'ble Supreme Court had refused to grant stay of the operation of the award as a result of which several similarly situated temporary workmen, who were retrenched in the like manner, had to be taken back into service and were continuing in service.

42. However, for deciding the present dispute I am not referring to the various decisions of other Industrial Tribunals and I am proceeding to decide this dispute as I see the law is.

43. It is true that if similarly situated workmen are ordered to be taken back into service only on the ground that they had worked for a few days in a Bank, then this may jeopardise chance of many candidates who may be more deserving and willing to compete for such jobs through open competition conducted by the Banking Service Recruitment Board. This indeed was one of the arguments advanced by the learned Counsel for the management. But, on the other hand, if the management is allowed to get away on that sole ground, then this would amount to condonation of the violation of the mandatory provision of law by those officials of the Bank. If they were entitled to appoint temporary hands, then they were also bound to observe the niceties of law while retrenching those temporary hands. It cannot be argued that the violation of provisions of law by the management should be condoned only on the ground that if not condoned this may effect the interest of certain persons who might be more eligible for the service. For this predicament it is the management which has to blame itself.

44. On the face of it this may not appeal to reason that a person who has worked for only a few days should be ordered to be reinstated into service without facing the regular test alongwith other eligible candidates thereby stealing a march over other genuine candidates.

45. For this the management has relied upon a decision reported in 1991(I) P.L.J.R. at 567 of Hon'ble High Court at Patna (Krishna Murari Prasad and another VS. Allahabad Bank). In that case the Industrial Tribunal had held that the retrenchment of the workmen was not illegal in view of Rule 76 of 1957 Rules since they had not worked for more than 240 days. But as is clear in this case, the workmen have not claimed regularisation on the grounds of their having worked 240 days in a calendar year and on the ground of violation of provisions of Section 26-F of the Act. But regarding violation of Sec. 25-H of the Act the Industrial Tribunal in that case had passed following Order directing :—

“...to hold the test for appointment of Peon-cum-Farrash within two months from the date of publication of the Award in the official Gazette and consider the case of the concerned workmen under Section 25-H of the I.D. Act. If any Peon-cum-Farrash has been appointed in the mean time the concerned workmen selected in the test should be given seniority as held by the Hon'ble Judges of Hon'ble Patna High Court in C.W.J.C. No. 5909 of 1988.” This order of the Industrial Tribunal was quoted by his Lordship in the aforesaid decision. It was also observed by his Lordship that Bihar State Allahabad Bank Employees Union had filed a Writ Application, being C.W.J.C. No. 5909 of 1988 raising the same issue which had been referred to the Tribunal for adjudication. In that Writ Application the Hon'ble Court by order dated 26-9-88 directed the Tribunal to decide the dispute within a time frame and also observed that if any outsiders were appointed against those posts, they should not be made permanent till the Reference case was disposed of, and such appointment should be subject to the result in the Reference case. Their Lordship did not enter into the merit of the case.

46. In this decision in the case of Krishna Murari Prasad and another, relied upon by the management his Lordship had observed that for seeking a right for re-employment under the provision of Sec. 25-H of the Act it was at least essential to establish that the affected person was a retrenched workman. But then his Lordship also discussed the scope of Sec. 2(oo)(bb) of the Act. His Lordship held that the petitioners who were working as casual workers were not entitled to any relief based on their claim under Sec. 25-H of the Act.

47. However, the facts in this case are different. I have already pointed out that since the workmen concerned had been removed from service before Sec. 2(oo)(bb) was brought on the statute book, that provision will not be applicable to them retrospectively. However, even after holding as above, his Lordship, in view of the fact that the petitioners had served for a considerable period as casual workers against certain assignments, upheld the order of

the Industrial Tribunal for holding a test for the concerned workmen. His Lordship directed that the Respondent-Bank would take appropriate step for giving the opportunity to the petitioners by extending offer to them for their employment on the vacant post after observing all the legal requirements.

48. The case of the present concerned workmen apparently stands on a better footing because theirs is a case of retrenchment and, admittedly, the Bank had not complied with the provisions of Sec. 25-H and 25-G of the Act, nor did it comply with the Rules 77 and 78 of the 1957 Rules. Before making any future appointment the Bank was bound to give preference to these retrenched workmen by giving them registered notice in compliance with the provisions of Rule 78 of the 1957 Rules.

49. Before disposing of the matter I may discuss another point raised by the learned Counsel for the management. The learned Counsel submitted that the concerned workmen have lost their right to seek any relief in view of the fact that they had made inordinate delay in raising the dispute. This dispute was admittedly raised in the year 1987. In the order of Reference, the dates of termination of the concerned workmen in the two Reference cases have been given. This ranges from 1979, as in the case of Gidhar Gopal, to 1987, as in the case of Bishwajit Das. Sri B. Joshi has submitted that delay has to be counted from the date the cause of action arose to the concerned workmen. He submitted that every time a new appointment was made by the Bank without giving opportunity to the concerned workmen as the Bank was bound to do under Sec. 25-H of the Act, a fresh cause of action arose to the workmen. In course of argument the learned Counsel for the Bank could not say specifically that all these years no fresh appointments were made on the post of Clerk/Cashier.

50. Shri Joshi further argued that when the dispute was raised in the year 1987 in which year the concerned workmen, Bishwajit Das was retrenched from service even on the failure report of the Conciliation Officer, the Central Government had refused to refer the dispute for adjudication. Thereafter a Writ Application had to be filed in which the Central Government was directed to refer the dispute for adjudication. According to Shri Joshi, for the aforesaid reasons, this Reference cannot be thrown out of window on the ground of staleness.

51. The delay which would make a Reference to be stale varies from case to case depending upon circumstances. In this case I am inclined to agree with the argument of Shri Joshi and to hold that relief should not be denied in this case on the ground of delay.

52. As already stated in the case of Krishna Murari Prasad and another Vs. Allahabad Bank (supra) the Hon'ble High Court had approved the direction of the Industrial Tribunal as to how the management should treat the case of the concerned workmen under Sec. 25-H of the Industrial Disputes Act.

53. But in this particular case there is no evidence on the record to show as to when the first appointment in the same grade was made after each of the concerned workmen were retrenched. They have been retrenched on different dates and in different years. Hence it is not possible to pass any composite order effective from particular date, for giving relief to each of them. But it has come into evidence that during the period the workmen were working, other workmen like S/Shri Alok Mitra and Taron Ghosh were appointed. It has also come into evidence that other workmen were also appointed after retrenchment of the concerned workmen. W.W. 1 has even named four persons. From the order of Reference itself it will appear that after a particular workman was retrenched, another concerned workman was appointed on a subsequent date, which continued upto the year 1987 when the concerned workmen Bishwajit Das (in Reference No. 131 of 1991) was retrenched. Admittedly, at none of these occasions or on the occasions other workmen were subsequently appointed, provision under Sec. 25-H was complied in the manner enunciated under Rule 78 of the 1967 Rules. On every such occasion the management was bound to give opportunity to the retrenched workmen to offer themselves for re-employment and to give preference to those concerned workmen, over other persons, who so offered themselves for re-employment. When these concerned workmen were denied any such offer, that already must have caused them much loss in terms of wages and seniority.

54. In the case of Krishna Murari Prasad and another Vs. Allahabad Bank (supra) such opportunity was given to the two workmen whose services were terminated, though his Lordship was of the opinion that their termination did not amount to retrenchment. The relief as granted by the Industrial Tribunal was upheld by his Lordship on the ground that they were casual workers having performed service for a long period.

55. As already stated, the case of the present workmen stands on much better footing so much so they have been held to have been retrenched from service and the management has been held not to have complied with the provision of the Act and of the 1957 Rules, as discussed earlier.

56. Therefore, in my opinion I find that the concerned workmen are entitled to benefit under Sec. 25-H of the Act. Since other persons have already been appointed in the mean time in similar posts as also observed by the Conciliation Officer and reiterated in the decision of Hon'ble High Court at Patna in Ext. W-4, it is immaterial for providing relief to the concerned workman to consider as to whether at present there was or was not any vacancy.

57. Obviously those appointments were made without offering re-employment to the concerned workmen. Therefore, these workmen cannot be asked to suffer for the reason of non-compliance of the provisions of law by the management.

58. I find that it would be just to direct the management to give an opportunity, in the manner as prescribed under Rule 78 of the 1957 Rules to these

concerned retrenched workman to offer themselves to re-employment and to give preference in employing those concerned workmen who offer themselves for re-employment. Obviously the management will not enforce the restriction of age in connection with these workmen since they had been retrenched from service and the management has been found not to have complied with the provision of law. So far as educational qualification is concerned these workmen will have to confirm the criteria of qualification as applicable to the post, in the Bank, in the grade of clerks, at the time they were working in the service of the Bank.

59. Since no side has placed before me the exact number of persons who have been appointed in the similar posts subsequent to the retrenchment of each of the concerned workman, this Tribunal is not in know as to how many posts have been filled up in the mean time. Obviously after the first retrenchment in the case of these workmen further appointments were made without giving an opportunity to that retrenched workmen for re-employment because in these two cases the Ministry had referred cases of a total number of 14 workmen. On the record is the evidence that workmen were also subsequently appointed. Therefore that stage has already passed when the concerned workmen could have been given preference over other persons because while appointing other persons the management did not offer re-employment to the retrenched workmen.

60. In such circumstances in my opinion it is proper to direct the management to offer re-employment to the concerned workmen and to re-employ them who offer themselves for re-employment.

61. At the same time I do not find it possible to pass any order in favour of the concerned workmen regarding payment of back wages to them on their reinstatement. The reason is that most of them appear to have waited for a long time before combining together to raise the industrial dispute. The management cannot be held responsible for this delay. In order to qualify for the payment of back wages, a workman is supposed to act swiftly. No doubt, one workman was retrenched in the year 1987 but since the cases of all the workmen have been taken together and since their cases stand on similar footing in all other respects, I don't find it proper to pass different order in case of different concerned workman regarding payment of back wages.

62. Following, therefore, is the award—

The action of the management in terminating, i.e., retrenching, the services of the concerned workman was not justified. The management also has committed mistake in not complying with the provisions of Section 25-G and 25-H of the Act as also has not conformed to the provisions laid down under Rules 77 and 78 of 1957 Rules. The management is hereby directed to treat the case of these workmen under Section 25-H of the Act and to offer them re-employment within two months of this award becoming enforceable and to re-employ those concerned workmen who offer themselves for re-employment. Should the management fail to do so, the management shall

be liable to pay them compensation every month at the same rate which they could have got paid as monthly salary had they been appointed in conformity with this award. This order shall be subject to physical fitness of the concerned workmen to perform their duties. However, on re-employment, the concerned workmen will not be entitled to any back wages.

Under the circumstances of the case, there would be no order as to the cost.

P. K. SINHA, Presiding Officer.

नई दिल्ली, 8 जून, 1995

वा.आ. 1826 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बुन्देलखंड क्षेत्रीय ग्रामीण बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-6-95 को प्राप्त हुआ था।

[संख्या एल - 12012/145/90 - आईआरबी - 3]

पी.जे. माईकल, डेस्क अधिकारी

New Delhi, the 8th June, 1995

S.O. 1826.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bundelkhand Kshetriya Gramin Bank, and their workmen, which was received by the Central Government on the 8-6-95.

[No. L-12012/145/90-IRB-3]

P. J. MICHAEL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

Case Ref. No. CGIT|LC(R) (199)|1990

BETWEEN :

Shri S. K. Sharma, Cashier-Cum-Clerk, represented by the General Secretary, Bundelkhand Kshetriya Gramin Bank Employees Association, Bhkhariya Bhanwan, Second Floor, Nazai Mandi, Tikamgarh (MP).

AND

The Chairman, Bundelkhand Kshetriya Gramin Bank, Nutan, Vihar Colony, Head Office Tikamgarh (MP)-472001.

PRESIDED IN : By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman : Shri P. K. Atluri, Advocate.
For Management : Shri R. Maindiretta, Advocate.

INDUSTRY : Banking DISTRICT : Tikamgarh (MP)

AWARD

Dated May 25, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-12012/45/90-IR(B-3) dated 1-10-1990, for adjudication of the following industrial dispute :

SCHEDULE

क्या बुन्देलखण्ड क्षेत्रीय बैंक टीकमगढ़ (मध्य प्रदेश) के प्रबंधकों द्वारा श्रमिक श्री एस. के. शर्मा के कैशियर कर्म-भलक की दिनांक 13-5-89 को दिये जाते वित्त वृद्धि को एक वर्ष से रोके जाने के संबंध में नियोजक का आदेश दिनांक 11-9-89 व्यापक है? यदि नहीं, तो संबंधित कर्मकार किस अनुतोप का हकदार है?

2. The admitted facts of the case are that the workman, Shri S. K. Sharma, was working as Cashier-cum-Clerk in Chandwani Branch of Bundelkhand Kshetriya Gramin Bank, Tikamgarh. It is also not in dispute that the management initiated a domestic enquiry against the workman Shri S. K. Sharma, and the Branch Manager and charges were levelled against both the Cashier and the Manager which comprised of—

- (a) Misuse of loan amount;
- (b) demand of money for grant of loan;
- (c) grant of loan to minors; and
- (d) receipt of illegal gratification for granting loan.

That the Enquiry Officer concluded that the charges against the Branch Manager, Shri M. M. Srivastava, was proved and held that no evidence was brought to the charges against the workman, Shri S. K. Sharma; that the Disciplinary Authority did not express in agreement on the finding of the Enquiry Officer and the Disciplinary Authority by virtue of the finding dated 27-3-1989 held the charges proved against the workman and awarded the impugned punishment.

3. The case of the management is that Shri S. K. Sharma was Clerk-cum-Cashier and along with him one Branch Manager was posted in the said Branch of the Bank; that the duty of the Clerk-cum-Cashier was to process grant of loan make necessary inspection of the intending borrowers and recommend grant of loan; that several serious irregularities were brought to the notice of the management in the matter of grant of loan and complaints were received that Shri S. K. Sharma was in the habit of receiving the money from the borrowers and that he had extended loan to the minors against the provisions of the Act; that the domestic enquiry was started against the Branch Manager and the Cashier and only one charge regarding the grant

of loan to the minor was held proved against the workman; that the punishment of stoppage of one increment with cumulative effect was inflicted on the workman after the perusal of the explanation of the workman. Management has alleged that the principles of natural justice were followed in the domestic enquiry and looking to the nature of the misconduct proved the punishment was imposed on the workman.

4. The case of the workman, Shri S. K. Sharma, is that no evidence was brought by the management against the workman and the management utterly failed to prove the charges levelled in the domestic enquiry; that the Enquiry Officer has also concluded that the charges were not proved; that the Disciplinary Authority has not given any reason of hold the workman guilty of the charges and that the finding of the Disciplinary Authority is perverse and it is against the evidence on record. The workman has alleged that sufficient opportunity was not given to the workman to cross-examine the witness and the findings against the workman were beyond the facts alleged in the charge-sheet and that the workman was held guilty for new charges. The contention of the workman is that the finding of the Enquiring Officer is biased, unreasonable and unfair and the order of permanent stoppage of increment is mala fide and is liable to be set aside. The workman has prayed to set aside the impugned order and consequential benefits thereof be awarded.

5. Following are the issues with my findings :
Issues

1. Whether the enquiry is just, proper and legal ?
2. Whether the management is entitled to lead evidence before this Tribunal ?
3. Whether the charges of misconduct are proved on the facts of the case ?
4. Whether the punishment awarded is proper and legal ?
5. Relief and costs.

6. Issue Nos. 1 and 2 : The workman has admitted that the domestic enquiry was fair and legal. Looking to the facts that there is no violation of the principles of natural justice during the domestic enquiry Issue Nos. 1 and 2 are answered in favour of the management.

7. Issue No. 3 : The Enquiry Officer has observed that the management has not produced any evidence to substantiate the charges against the workman, Shri S. K. Sharma. The Enquiry Officer has observed that the witnesses have not stated anything to show the involvement of the workman, Shri S. K. Sharma, in the commission of the misconduct alleged in the charge-sheet. The

Enquiry Officer has held that the charges against the Branch Manager are proved but charges against the workman, Shri S. K. Sharma, are not proved. The Enquiry Officer has stated that the loan was given to one borrower who was minor. On page 3, para 3, the Enquiry Officer has rightly observed that the management has not led any evidence to show that the alleged borrower was minor at the time of the sanction of loan to him. Consequently, it is clear that there is nothing to prove and conclude that Shri S. K. Sharma recommended the grant of loan to the minor. The discretion was with the Cashier and the Branch Manager to grant the loan to the borrower who from his appearance appeared to be an adult. Consequently, even if it is assumed that he recommended for the grant of loan was made to the minor, even then it cannot be presumed that the Cashier or the Branch Manager violated any rule unless mala fide was established by the management. There is no evidence whatsoever to show that the Cashier or the Branch Manager intended to show undue favour to the alleged minor and the workman knowingly recommended the case of the minor showing him as a minor.

8. The Disciplinary Authority has given no reason whatsoever to come to this conclusion that the charges are proved against the workman. The following is the observation made by the Disciplinary Authority :

"3. प्रस्तुत प्रकरण में जांच अधिकारी ने अपने जांच प्रतिवेदन दिनांक 10-12-87 में यह निष्कर्ष निकाला है कि अभियोजन पक्ष द्वारा आवश्यक साक्ष्य प्रस्तुत न कर पाने के कारण श्री शर्मा के विरुद्ध अभिरोपित आरोप सिद्ध नहीं पाये जाते हैं। प्रस्तुत जांच में विचारित सभा उनके द्वारा निम्न प्रश्नों पर विचार नहीं पाया जाता है:— जिन साक्ष्यों को अभियोजन पक्ष इस कार्यवाही में प्रस्तुत करने में असफल रहा है, उन्हीं साक्ष्यों ने दिनांक 24-9-87 को सहयोगी आरोपी श्री एम. एम. श्रीवास्तव की विभागीय जांच कार्यवाही में उपस्थित होकर अपने बयान देना किया था। जिनका संदर्भ प्रस्तुतकर्ता अधिकारी द्वारा अपने तर्क दिनांक 26-10-87 में उल्लेख किया है, इन बयानों के अनुसार आरोपी श्री एम. के. शर्मा सहयोगी आरोपी श्री एम. एम. श्रीवास्तव के साथ घोटाले में निव्विवाद रूप में निरूपित पाये जाते हैं। दिनांक 24-9-87 को उन्हीं साक्ष्यों द्वारा एक जांच कार्यवाही में निर्दिष्ट पूर्वक बयान देना करवाकर आरोप को प्रमाणित किया है, इन्हीं आरोपों को द्वितीय विभागीय जांच में प्रमाणित करने हेतु जज उन्हें 11 दिन पश्चात् दि० 6-10-87 एवं 7-10-87 को प्रस्तुत कर्ता अधिकारी बार बार सूचित किया एवं स्वयं सम्पर्क स्थापित करने के प्रयास किये गये तो ऐसा न होने के कारण सामने आये जिनके वर्णन हो कर वे आश्चर्य देने के उद्देश्य जांचकर्ता अधिकारी के समक्ष उपस्थित नहीं हुए, इस संबंध में प्रस्तुतकर्ता अधिकारी के इस तर्क कि

उन साक्ष्यों को आरोपी कर्मचारी द्वारा अपने पक्ष में कर लिया है, जो बयान में मुझे कोई आपत्ति नहीं दिखलाई देती है। यद्यपि इस आरोपी कर्मचारी के विरुद्ध अभिरोपित आरोप बस्तावेजों सिद्ध होगा नहीं माना गया है। तथापि आरोप पत्र में उल्लेखित प्रत्येक प्रमाणों को विचारित नृण गति से 3000 में से रु. 500 कम प्राप्त होने का उल्लेखित शाखा प्रबंधक श्री एम. एम. श्रीवास्तव एवं विधिक सह रोकड़िया श्री ए. के. शर्मा जो कि वक्त के समय शब्दा बर्णनी में एक साथ बयानकारी एवं कर्मचारी नियुक्त के, साक्ष्यों ने श्रीवास्तव के विरुद्ध की गई जांच के दौरान अपने निर्भीकतापूर्वक बयान के लेखबद्ध करवाकर प्रमाणित किया है अतएव श्री शर्मा के विरुद्ध प्रकरण में साक्ष्यों की अज्ञान कारणों से साक्ष्य हेतु उपस्थित न होना के कारण पूर्व में ही आरोपों के प्रमाणित करने को अवदेक्षा लिये जाने में कोई हक नहीं है। प्रस्तुत प्रकरण में साक्ष्यों की अनुपस्थिति से निर्दिष्ट स्थिति एवं अज्ञान प्रकरण में उपलब्ध साक्ष्यों को अज्ञान में रखने हेतु जांच अधिकारी के निष्कर्ष से असहमति व्यक्त करने हेतु आरोपी के विरुद्ध अभिरोपित घोटाले का संक्षेप ज्ञापन "घोटाले करना व घोटाले का नतीजा देना" परिस्थिति अन्य सिद्ध माना गया।

From the aforesaid observation of the Disciplinary Authority, it is clear that he has admitted that there is no evidence against the workman. That by virtue of the perverse reasoning he has held workman, Shri S. K. Sharma, guilty of the charges. The reasoning of the Disciplinary Authority is that the witnesses of the management were won over by the workman and as they have given the evidence against the Branch Manager so it will be presumed that the Cashier is also involved in the misconduct. This line of reasoning is conjectural and hypothetical and as such unacceptable.

9. Consequently, it is held that there is no evidence exist against the workman, Shri S. K. Sharma, to prove the charges. It is further held that the findings of the learned Disciplinary Authority are perverse and they are liable to be set aside. Consequently, Issue No. 3 is held against the management.

10. Issue No. 4: As the findings are perverse, the punishment awarded to the workman is hereby set aside.

11. Issue No 5: Reference is answered against the management and the impugned order dated 11-9-1989 is held improper and illegal. The workman, Shri S. K. Sharma, is entitled to all the consequential benefits of which he was deprived during the stoppage of the increment by the impugned order dated 11-9-1989. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 8 जून, 1995

का. आ. 1827.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तमिलनाडू मिनरल्स लिमिटेड के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-6-95 को प्राप्त हुआ था।

[संख्या एल - 29011/40/90 - आई आर (विविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 8th June, 1995

S.O. 1827.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, MADRAS as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Tamilnadu Minerals Ltd., and their workmen which has received by the Central Government on the 8-6-95.

[No. L-29011/40/90-IR(MISC)]

B. M. DAVID, Desk Officer
ANNEXUREBEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, MADRAS

Wednesday, the 29th day of March, 1995

PRESENT :—

Thiru K. Ponnusamy, M.A.B.L., Industrial
Tribunal.
Industrial Dispute No. 13/1991

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of M/s. Tamil Nadu Minerals Ltd., Madras).

BETWEEN :—

The workmen represented by
The General Secretary,
Tamil Nadu Minerals Loading Thozhilalar
Munnetra Sangam, Perianagalur Lime Stone
Mines, Ariyalur Taluk, Trichy-621 704.

AND

Shri S. Anna Durai, Loading Contractor;
Perianagalur Limestone Mines,
No. 26, Ramalinga Mudaliar St., Ariyalur-
621 704.

2. The Managing Director,
Tamil Nadu Minerals Ltd.,

TWAD Building, No. 31, Kamarajar
Salai,
Chepauk, Madras-600 005.

1436 GI/95—10.

Reference : Order No. L-29011/40/90/IR(Misc),
dated 6-3-1991, Ministry of Labour,
Govt. of India, New Delhi.

The dispute after restoration, coming, on this day for final disposal in the presence of Tvl. B. C. Gnanadesikan, and K. C. Ramalingam, Advocates appearing for the Workmen and of Thiru N. Jothi, Advocate appearing for Management, upon persuing the reference, claim and Counter statements, and other connected papers on record and Management No. 1 being absent, and set exparte, and the workmen having made an endorsement for withdrawing this dispute, this Tribunal passed the following

AWARD

Endorsement is made by petitioner. This I.D. is dismissed as withdrawn. No costs.

Dated, this the 29th day of March, 1995

Sd/-

K. PONNUSAMY, Industrial Tribunal

COPY OF ENDORSEMENT MADE BY PETITIONER'S COUNCIL

Petition I.D. 13/1991 may be dismissed as withdrawn with a liberty to file a fresh petition.

Council for Petitioner,
K. PONNUSAMY, Industrial Tribunal

नई दिल्ली, 8 जून, 1995

का. आ. 1828 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास पोर्ट ट्रस्ट के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-6-95 को प्राप्त हुआ था।

[संख्या एल - 33012/6/88 - डी III- बी]

बी.एम.डेविड, डेस्क अधिकारी

New Delhi, the 8th June, 1995

S.O. 1828.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Madras Port Trust and their workmen, which was received by the Central Government on the 8th June, 1995.

[No. L-33012/6/88-D.III(B)]

B. M. DAVID, Desk Officer

ANNEXURE
BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, MADRAS

Friday, the 31st day of March, 1995

PRESENT :

THIRU K. PONNUSAMY, M.A.B.L.,

INDUSTRIAL TRIBUNAL.

INDUSTRIAL DISPUTE NO. 31/1989

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workman and the Management of Madras Port Trust, Madras).

BETWEEN

Shri K. N. Chinnappan, No. 3, Jammal
Sowcar Gard Street, Old Washerman-
pet, Madras-600 021.

And

The Chairman, Madras Port Trust, Rajaji
Salai, Madras-600 001.

REFERENCE :

Order No. L-33012/6/88-D.III(B), dated
13-3-1989, Ministry of Labour, Govt.
of India, New Delhi.

This dispute coming on for final hearing on Wednesday, the 29th day of March, 1995, upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Tvl. M. Krishnan and D. Balasundram, Advocate appearing for the workman and of Tvl. A. L. Somayaji and R. Arumugam, Advocates appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This reference has been made for adjudication of the following issue :

“Whether the action of the Management of Madras Port Trust in dismissing the services of Sh. K. N. Chinnappan, Fitter Grade III w.e.f. 14-7-87 is justified. If not, what relief is he entitled to.”

2. The claim of the petitioner briefly stated is as follows :

The petitioner's entire service in the defence services had been an unblemished one. As a matter of fact in the discharge certificate the petitioner's character has been assessed exemplary. On 1-8-1981, the petitioner entered the services of the Madras Port Trust, as Fitter Grade II (Pipe Line), in the E & M Department, on having

been selected for the post after a practical test and an oral interview. From then on, the petitioner had been and continued to be under the administrative control of the respondent. In all the years since the petitioner's joining the services of the Madras Port Trust, the petitioner was working to the best satisfaction of all his superiors and his career had all along been an unblemished one. Never once in the petitioner's career, not in the defence services, and later in the Madras Port Trust, had any adverse remark been made against the petitioner. On 3-3-1987, the enquiry began. From the very next day Mr. Raghava, withdrew from appearing as defence counsel. As the search conducted by the Enquiry Officer was illegal, a complaint was made to the Commissioner of Police by one Mr. Ekamabram, with whom the petitioner was residing. The petitioner also lodged an objection with the Chairman, Port Trust on 5-3-1987. But no action was taken on the petitioner's objection and the enquiry continued. Before the charge memo was served on him, the Vigilance Officer Madras Port Trust obtained from him under duress a statement which the Vigilance Officer himself dictated with a view to implicating the petitioner in charge as framed in the charge memo dated 16-1-87 aforesaid. On 24-1-87 the petitioner caused a legal notice to be issued by one Mr. Pandidurai, Advocate, taking exception to the statement obtained under duress from the petitioner by the Vigilance Officer. But there was no reply to this Lawyer's notice as well. Giving of bribe or any illegal gratification is equally as grave as taking of bribe and has to be visited with the same punishment, namely suspension and/or dismissal. No departmental enquiry has so far been instituted against them. The logical inference that can be drawn in the circumstances is that there was no basis at all for the charge as framed against the petitioner. What was done against the petitioner was of a vindictive nature to victimise him. In any case, the petitioner cannot be singled out for a discriminatory treatment. Raghavan could not continue to represent the petitioner at the enquiry, a reasonable opportunity to defend him has been denied to the petitioner. This is against the principles of natural justice. The finding No. 5 in the Enquiry Officer's report is based on his confessional statement and this finding is untenable in law and is in fact opposed to law. The Enquiry Officer threatened Balasubramaniam who initially denied knowledge of the receipt of the illegal gratification by the petitioner and the said Balasubramaniam started deposing against the petitioner thereafter. The Enquiry Officer had recorded that the earlier part of the evidence given by Sri Balasubramaniam denying the knowledge of the receipt of the illegal gratification would be treated as cancelled at his request. Such an action on part of the Enquiry Officer was grossly

illegal and would militate against the well-established principles governing the conduct of departmental enquiry proceedings. This has also vitiated the entire enquiry proceedings against the petitioner. He preferred an appeal against the order of discharge to the Chairman, Madras Port Trust on 16-9-1987, drawing his attention to all the lapses in the conduct of the enquiry and praying him to set aside the order of the discharge. This appeal was finally disposed of on 16-11-1987, with the observation that there was no reason to interfere with their order of discharge. On 4-1-1988, the petitioner sent a Lawyer's notice to the Chairman, Madras Port Trust, drawing his attention to the fact that he had not properly applied his mind to the facts of the case and seemed to have been passed mechanically. But the petitioner has not received any reply from the Chairman, Madras Port Trust to that notice. This Tribunal may be pleased to hold that the discharge of the petitioner from services of Madras Port Trust is not justified and that it is illegal and arbitrary and the Tribunal may accordingly be pleased to pass a final award reinstating him to service with back wages, continuity of service, and other benefits including seniority and promotion and also award costs.

3. The defence of the respondent briefly stated is as follows : The respondent received a written complaint from T.G. Radhakrishnan, V. Munirathnam, Kuppaswamy, and L. Jayaraj, the workers of the Trust stating that the petitioner collected Rs. 5,000 from each one of them promising to get job to their respective sons and he had returned a sum of Rs. 4,700/- to V. Munirathnam, and promised to return the money to others. On this written complaint the vigilance officer made an enquiry on 16-1-87 and the petitioner voluntarily gave a statement admitting the collection of money from the workers on the promise to secure jobs to the sons of the workers. As the petitioner indulged in collecting money in illegal manner from the workers, the respondent initiated disciplinary action. Notwithstanding the fact that the petitioner pleaded guilty of the charges the following charges were framed against the petitioner. The petitioner submitted his explanation on 19-1-87 denying the charges. The respondent having not satisfied with his explanation ordered an enquiry. In that enquiry the petitioner was permitted to be defended by a Co-worker K. S. Raghavan, Senior Assistant as desired by the petitioner. The enquiry commenced on 3-3-1987. The defendant and the co-worker Sri Raghavan who defended him were present at the enquiry. However on the first day of the enquiry Sri Raghavan stated that he was not willing to continue as defence counsel and withdrew voluntarily from appearing as defence counsel. There was no objection from the petitioner for the continuation of the enquiry. In the enquiry full opportunity was given to him. The petitioner fully participated and

cross-examined the management witnesses. The petitioner also gave his statement in the enquiry. The enquiry officer based on the evidence recorded during the enquiry and other documents and records produced in the enquiry rightly concluded that the charge against the petitioner that he received Rs. 500 each from Sri Radhakrishnan, Munirathnam, Kuppaswamy on different dates between 13-9-1986 and 20-10-86 on the pretext of getting apprenticeship (sports quota) to their sons was proved. Then the respondent issued a second show cause notice on 13-6-1987. The petitioner did not give any valid reasons to interfere with the proposed punishment even though he has submitted his explanation on 20-6-87. The petitioner was also given a personal hearing on 14-7-87, before issuing the order of punishment. The respondent after taking into consideration, his past record of service and the gravity of the charge proved in the enquiry, issued an order dated 14-7-87 discharging him from service. The petitioner was not working to the best satisfaction of all that his superiors and that his career had all along been an unblemished one. In fact the petitioner was punished 5 times while in Trust's service the details are given below : 1. "Censured" for his irregular attendance during the period from 1-8-1981 to 28-2-1982. 2. "Censured" for having failed to attend on the new high level tank, which was found overflowing at 5.30 hours when he was posted during III shift on 19-4-85 at Timber pond. 3. "Censured" for having been found missing from the workspot at 20.15 hours on 14-10-1985. Increment postponed for a period of one year without cumulative effect for his missing from the workspot from 12.00 hours to 14.00 hours on 15-11-1985 when he was posted at Marshalling Yard, Fresh Water Tank. 5. A sum of Rs. 150 being the cost of Dock Exchange Telephone No. 423 which was lost due to his carelessness ordered to be recovered from his salary in 10 instalments. The above fact will show that the contention of the petitioner is absolutely incorrect. The petitioner never objected to the continuance of the enquiry by the same enquiry officer. Infact the petitioner continued to attend and participated in the enquiry. Therefore the objection regarding the search made is not relevant. Some incriminating documents were seized from him as a result of such search. It is incorrect to state that the Vigilance Officer obtained from the petitioner under duress a statement which the Vigilance Officer himself dictated with a view to implicate him. The petitioner gave the statement voluntarily on 16-1-87 on his own and no immediate protest was made by him. Therefore it is an afterthought to escape from the charge. The lawyer's notice was given only on 24-1-87, i.e. after a period of 8 days and disciplinary action was already initiated. The statement made by him in claim statement that the persons who gave bribes also should be punished will show that he himself

admitted about the receipt of money. It is incorrect to state that no departmental enquiry has so far been instituted against them. In fact the employees concerned were also charge sheeted and disciplinary action was also initiated against them. The various allegations such as there was no basis at all for the charge that what was done was vindictive in nature to victimise him that the petitioner has been singled out for a disciplinary treatment and that it would be against the spirit of article 14 are hereby denied. Further there are no merits in any one of the above contentions. The petitioner's defence representative Sri Raghavan, was not willing to continue and withdrew voluntarily. The respondent has not created any conditions for his withdrawal as alleged by the petitioner. It is incorrect to state that a reasonable opportunity to defend him has been denied to the petitioner. On the otherhand, the petitioner even after his defence representatives withdrawal continued to attend and participated in the enquiry. The petitioner never raised any objection for the continuance of the enquiry at any stage and never asked for another defence representative after Sri Raghavan had withdrawn. It is clear that from this that the petitioner was not denied any opportunity in the enquiry. Thus the principles of natural justice was not violated at any stage. The allegations that a confessional statement was obtained by vigilance officer, etc. is denied. It is incorrect to state the findings of the Enquiry Officer are based on the confessional statement. The allegations such as the answer given by the Balasubramaniam was not to the liking of the Enquiry Officer who was pre-disposed against him right from the beginning that the enquiry Officer threatened Balasubramaniam and that the enquiry officer recorded statements on his own are all denied as there is no truth in any one of them. The Enquiry Officer recorded the proceedings correctly and no objection was raised by the petitioner at the enquiry which itself shows it is only an after thought. What was deposed by Balasubramaniam was rightly recorded by the Enquiry Officer. If the petitioner had any such apprehension he should have brought out the same by cross-examining Balasubramaniam. There is no prohibition to issue the order of punishment on the very same day on which personal hearing was given. There are no lapses in the conduct of the enquiry as alleged. It is incorrect to state that the Chairman had not properly applied his mind to the facts of the case and had passed the order mechanically. The Disciplinary authority before awarding the punishment of discharge has taken into account his past record of service and other extenuating or aggravating circumstances. The appellate authority had also taken into account all the aspects before deciding the appeal. In the event of this Tribunal coming to the conclusion that the enquiry conducted against the petitioner is not fair and proper and or the findings of the Enquiry Officer is perverse, opportunity may be granted to the respondent to lead fresh evidence to

justify the impugned order and punishment. In these circumstances, it is prayed that this Tribunal may be pleased to dismiss the claim of the petitioner and answer the reference in the negative and thus render justice.

4. The issue for consideration is :

"Whether the action of the Management of Madras Port Trust in dismissing the services of Shri K. N. Chinnappan, Fitter Grade III w.e.f. 14-7-87 is justified? If not, what relief is he entitled to?"

5. The Issue : The petitioner was an ex-service-man. After retirement the petitioner was appointed as Fitter Grade III (Pipe Line) in the E & M Department of Madras Port Trust. Nos. 1 to 4 gave Rs. 5000 each to the petitioner for procuring job of Trade Apprenticeship to their sons by influencing the Chairman of the Port Trust. The 4 persons gave a complaint Ex. M. 16, to the Chairman of the Madras Port Trust or taking necessary action. The petitioner confessed that he received Rs. 5,000 from each of the MWs 1 to 4, promising them to secure that post of Trade Apprenticeship to their sons by influencing the Chairman of the Port Trust failing which he will return the money and he repaid Rs. 4,700 to MW2, is borne out by Ex. M. 1. The petitioner retracted the confession to escape from the punishment. His stand is that he has not received any money from the 4 persons promising to get job of Trade Apprenticeship to their sons by influencing the Chairman of the Port Trust and cheated the complainants. The Chief Mechanical Engineer issued charge memo to the petitioner that he indulged in collecting illegal gratification and submit his explanation as to why disciplinary action should not be taken against him and he was suspended pending Disciplinary action is evidenced by Ex. M. 2. The petitioner submitted his explanation denying the charges in total. His confession was not obtained by duress of the Vigilance Officer and the signature was not obtained by the compulsion and threat that he will be handed over to the Police. His confession statement was not written to the dictation of the Vigilance Officer in this office. The petitioner did not know the contents of his confession statement, as stated in Ex. M. 3 is untrue. The petitioner was called upon to submit his explanation as to why disciplinary action should not be initiated against him. He submitted his explanation. Since his explanation was unsatisfactory and unconvincing the domestic enquiry was ordered and conducted, is established by Ex. M. 4. The petitioner participated in the domestic enquiry and he had the assistance of his defence representative. The petitioner through his Advocate sent a notice to the Chairman and Chief Vigilance Officer, Madras Port Trust, denying the receipt of money of 4 complainants should have been suspended, is disclosed by Ex. M. 5. The petitioner submitted his explanation the Chief Mechanical Engineer, Madras Port Trust is evidenced by Ex. M. 6 & M. 7. He made written statement to

the Chief Mechanical Engineer, Madras Port Trust, is supported by Ex. M. 8. Domestic enquiry proceedings are proved by Ex. M. 9. He submitted his final written statement, is made out by Ex. M. 10. His wife Krishnaveni submitted a petition to the Chairman, Madras Port Trust, claiming maintenance, is supported by Ex. M. 11. The petitioner sought the help and assistance of the Legal Aid and Advise Board, is evidence from Ex. M. 12. The petitioner sent a petition to the Chairman, Madras Port Trust, that he got trouble and he was assaulted and his cycle, wrist watch, and spectacles were taken away is disclosed by Ex. M. 13. The petitioner through his Advocate sent a notice to the Chairman, Madras Port Trust to reinstate him and revoke the suspension is revealed by Ex. M. 14. The slight discrepancy in the oral evidence with regard to the payment of Rs. 5,000 each by 4 persons to the petitioner does not militate against the case of the respondent. In M. 16, the clerical corrections do not affect its intrinsic evidence. The second page of the first sheet of Ex. M. 16 is not written for the sake of convenience. It does not affect the credibility and reliability of Ex. M. 16. Ex. M. 16 is not created or fabricated for the occasion. The petitioner was given reasonable and sufficient opportunity to defend his case and cross-examine the witnesses examined on the side of the respondent, and produce documents on his side and examine witnesses.

6. The petitioner neither produced any document nor examined any witness on his side. At one point of time, the petitioner did not engage his lawyer, to take part in the domestic enquiry. The domestic enquiry was conducted in accordance with the principles of natural justice, Standing Orders, of the Madras Port Trust, the procedure prescribed by the Act and the Provisions of Law. The domestic enquiry does not suffer from any infirmity or mistake. The domestic enquiry is not vitiated. Prima facie case has been made out. The findings of the Enquiry Officer is based on the evidence and the documents. The domestic Enquiry Officer has no bias against the petitioner. The Enquiry Officer after careful analysis of the evidence and scrutiny and consideration of the documents found the petitioner guilty of the charges levelled against him. The past records of the service of the petitioner are not good. The petitioner was given opportunity to explain his past records of service. The charges levelled against him are proved by legal evidence. There is no discrimination. There is no victimisation. Disciplinary action is pending against the 4 complainants. The appeal by the petitioner to the Chairman, Madras Port Trust was dismissed. The Chairman, of Madras Port Trust, applied his mind in dismissing the appeal. The 2nd Show Cause Notice was issued to the petitioner to submit his explanation as to why the proposed punishment of

dismissal from service should not be imposed. The petitioner submitted his explanation to the second show cause notice. The Disciplinary Authority after careful scrutiny of the evidence and documents and the explanation submitted by the Enquiry Officer, concurred with the findings of the Enquiry Officer and applied his mind and dismissed the petitioner from service. The domestic enquiry conducted by the Enquiry Officer is fair and proper.

7. The more fact that the four complainants did not file a suit against the petitioner for recovery of the money does not mean that he did not receive Rs. 5,000 each from the four complainants. Under Section 11-A of the Industrial Disputes Act, this Tribunal has got ample power to interfere with the punishment imposed by the Disciplinary Authority, is held in 1973 LAB.I.C. P. 851 Workmen of F.T.R. Company Vs. The Management. Having regard to the gravity of the misconduct, committed by the petitioner, the punishment of dismissal of the petitioner cannot be considered as excessive and disproportionate. The punishment imposed by the Disciplinary Authority against the petitioner is in commensurate with the gravity of the misconduct committed by him. This Tribunal does not find any reason to interfere with the punishment of dismissal of the petitioner from service by the Disciplinary Authority. For the foregoing reasons, this Tribunal comes to the irresistible conclusion that the action of the Management of Madras Port Trust, in dismissing the services of Shri K. N. Chinnappan, Fitter Grade III w.c.f. 14-7-87 is justified and whether he is entitled to any relief does not arise for consideration. The first part of the issue is found in the affirmative and the second part of the issue accordingly.

In the result, an award is passed rejecting the claims of the petitioner. No costs.

Dated, this the 31st day of March, 1995.

THIRU K. PONNUSAMY, Industrial Tribunal

WITNESSES EXAMINED

For Workman : None

For Management :

M.W. 1 : Thiru T. G. Radhakrishnan.

M.W. 2 : Thiru V. Munirathnam.

M.W. 3 : Thiru N. Kuppuswamy.

M.W. 4 : Thiru L. Jayaraj.

DOCUMENTS MARKED

For Workmen : Nil

For Management :

Ex. M-1|16-1-87 : Letter from Petitioner-workman to the Vigilance Office, Madras Port Trust, (Xerox copy).

M-2|16-1-87 : Charge memo issued to the petitioner-workman (Xerox copy).

M-3|19-1-87 : Explanation by the petitioner-workman to Ex. M.2 (Xerox copy).

M-4|24-1-87 : Letter from the Management to the Petitioner-workman regarding enquiry (Xerox copy).

M-5|24-1-87 : Lawyer's notice issued on behalf of the Petitioner-workman to the Management (Xerox copy).

M-6|4-2-87 : Explanation by the Petitioner-workman to Ex. M.4 (Xerox copy).

M-7| : An Extract from Note file No. CME|DA3|297|87 Estt. (Xerox copy).

M-8|5-3-87 : Letter from Petitioner-workman to the Management (Xerox copy).

M-9| : Proceedings of the Enquiry Officer etc. (Xerox copy).

M-10|11-4-87 : Final written statement of the Petitioner-workman to the Management (Xerox copy).

M-11|26-5-88 : Letter from Smt. Krishna-veni, wife of the Petitioner-workman to the Management (Xerox copy).

M-12|30-3-88 : Letter from Petitioner-workman to the Secretary, Legal Aid Board, High Court, Madras (Xerox copy).

M-13|3-6-88 : Letter from Petitioner-workman to the Management (Xerox copy).

M-14|1-7-88 : Lawyer's notice to the Management (Xerox copy).

M-15|11-6-87 : Findings of the Enquiry Officer (Xerox copy).

M-16 : Complaint by Tvl. T.G. Radhakrishnan, V. Munirathnam, N. Kuppusamy & L. Jayaraj against Petitioner-worker. (Xerox copy).

बीच, अनबन्ध में निदिष्ट औद्योगिक विवाद में, केन्द्रीय सरकार अधीकरण (सं. 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-6-95 को प्राप्त हुआ था।

[संख्या एल-20012/174/89-आईआर (कोल-I)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 8th June, 1995

S.O. 1829.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bastacolla Area No. IX of M/s. BCCL and their workmen, which was received by the Central Government on 7-6-95.

[No. L-20012|174|89-IR(Coal-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Section 10(1)(d) (2-A) of the Industrial Disputes Act, 1947.

Reference No. 15 of 1991

PARTIES :

Employers in relation to the management of Bastacolla Area No. IX of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri P. K. Sinha, Presiding Officer.

APPEARANCES :

For the Employers : Shri S. N. Sinha, Advocate.

For the Workman : Shri C. Prasad, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 25th May, 1995

AWARD

By Order No. L-20012(174)|89-I.R.(Coal-I) dated, the 26th February, 1991, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Bastacolla Area No. IX of M/s. Bharat Coking Coal Ltd. in denying benefit of Para 9.4.3 of NCWA-III to Shri Baidyanath Mitra, P.F. Clerk by not referring him to Medical Board is justified? If not, to what relief the workman under Clause 9.4.3 of NCWA-III is entitled?"

2. In the written statement filed by the sponsoring Union it has been claimed that the concerned workman, Baidyanath Mitra, working as P.F. Clerk at Bastacolla

नई दिल्ली, 8 जून, 1995

का. आ. 1829.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में भारत कोकिंग कोल लि. के बास्ताकोला क्षेत्र सं. 9 के प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के

Colliery, was on sick leave from 2-8-86 to 8-8-86. He again remained on earned leave on 16-8-86 because of ill health and sent his application and proceeded on earned leave upto 1-10-1986. On 3-10-86 he went to the office and requested the management to send him to the Apex Medical Board. His repeated requests thereafter also fell on deaf ears and he was not sent to the Apex Medical Board though he was claiming to be disabled to carry on his duty due to disease. This action of the management deprived him to take benefit of para 9.4.3 of NCWA-IV. The workman continued to be absent because of his ill health till his superannuation on 25-9-88.

3. It has been asserted that the concerned workman was under treatment of Dr. R. K. Sinha, Civil Asstt. Surgeon, as also was treated in the Central Hospital of M/s. BCCL at Bhuli. Doctors had declared him unfit to prosecute his normal duties. The workman could not work from 3-10-86 to 25-9-88, for which he was not paid any wages.

4. It is admitted that earlier the workman was sent to the Apex Medical Board to assess his age, but was not sent to the Board for determining his disability to work.

4A. In the meantime the management issued a charge-sheet dated 20-4-87 on the allegation of continued absence, and issued a notice dated 14-16-88 for holding an enquiry into that charge-sheet.

5. Because of refusal of the management to send him to the Apex Medical Board, an industrial dispute was raised since he was entitled to get benefit of para 9.4.3 of N.C.W.A. III and N.C.W.A.-IV. A prayer has been made to hold the action of the management to be unjustified and to pass an award that one of the dependant sons of the concerned workman, now late B. N. Mitra, should be given employment in the company.

6. The management appeared and filed its written statement. It has been admitted that on 25-9-84 workman was examined by the Apex Medical Board for determination of his age which decided his age to be 56 years on that date, though according to the date of birth recorded in Form 'B' Register he was born on 13-2-1925. The age determined by the Board was accepted by the management and the workman retired from the service with effect from 26-9-88.

7. It has further been contended that the workman reported sick with effect from 4-10-86 and during that period he was under treatment of Colliery dispensary, Central Hospital, Bhuli and Central Hospital, Dhanbad as well of outside physicians. He continued absenting from 4-10-86 to 25-9-88, i.e., till the date of superannuation on attaining the age of 60 years. Though he was issued charge-sheet but the management did not take any action against the workman for his absence.

8. It is admitted in the written statement that the workman had applied for being referred to the Apex Medical Board for declaring him medical unfit so that the benefit under Clause 9.4.3 of N.C.W.A. III could accrue to him.

9. Though the workman concerned was under treatment of eminent doctor in different hospitals of

the company, yet he preferred to obtain "unfit certificate" from one Dr. R. K. Sinha, a Civil Asstt. Surgeon of the State Government. It has been argued that in view of that the management was justified in not referring his case to the Apex Medical Board, hence, it has again been argued, the concerned workman was not entitled to any relief.

10. The points for consideration are, firstly, whether the action of the management in denying benefit of para 9.4.3. of N.C.W.A. III to the concerned workman, by not referring him to the Medical Board was justified. If the action is found not to be justified, then the second point for consideration would be as to what relief the concerned workman under the aforesaid clause of N.C.W.A. III is entitled.

11. In this case the only witness that has been examined was Vijoy Kumar on behalf of the management. He has spoken about re-assessment of the age of the concerned workman on 25-9-84 when he was found to be 56 years old. Admittedly, a workman retires in M/s. B.C.C. Ltd. on attaining the age of 60 years. Therefore, because of assessment of age by the Apex Medical Board, he was to continue working till 25-9-88.

12. This witness has admitted that on 2-2-87 the workman filed an application (Ext. M-2) that he was unfit to continue work since he was suffering from asthma. Then on 10-4-87 he also filed medical certificate to this effect. This witness contended that as per Clause 9.4.3 of N.C.W.A. IV, which was applicable on the relevant date (having come into effect on 1-1-87), the application dated 2-2-87 was filed after the expiry of the statutory period. Therefore, the management through the evidence of this witness has not taken the stand as taken in their written statement, that since disability certificate was granted by an outside doctor the management was right in not referring the concerned workman to the Apex Medical Board. According to this witness, the application was filed beyond the period prescribed hence was fit to be rejected.

13. This witness also admitted that the concerned workman had expired in the year 1990.

14. There is hardly any merit in the contention of the management. In the written statement the management has admitted that the concerned workman was continuously absent with effect from 4-10-86, till his superannuation, i.e., almost for a period of a bit less than two years of his service. It has also been admitted that during this period the workman continued to be treated in the various hospitals of the company. Therefore the prescriptions etc. filed on behalf of the workman hardly need to be discussed in view of this admission of the management.

15. However, the management has filed Ext. M-1 which is the photo copy of the entry about the concerned workman in Form 'B' Register which shows that earlier his date of birth was recorded to be 13-2-1925, but his age was assessed to be 56 years as on 25-9-84 by the Apex Medical Board.

16. Sri S. N. Sinha, learned Counsel for the management has pointed out to me Ext. M-3 which

is a circular letter dated 7-7-92, issued by the Director (Personnel) of the Company relating to implementation of Clause 9.4.3 of the NCWA-IV stating therein that disablement under 9.4.3 (i) should arise from the five types of diseases mentioned in that circular which does not include asthma. Sri Sinha submitted that the workman could not have claimed permanent disablement on account of his suffering from asthma which disease he had mentioned in his application dated 2-2-37 (Ext. M-2). But this argument is not available to the management simply because that this circular came into force with effect from 7-7-92. This cannot have a retrospective effect. Moreover, this circular is only explanatory and cannot be treated exhaustive because ultimately it is provision of N.C.W.A. IV itself which has to be given effect to.

17. The provision under Clause 9.4.3 of N.C.W.A. IV runs as follows :

“9.4.3—Employment to one dependant of a worker who is permanently disabled in his place :

- (i) The disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.
- (ii) In case of disablement arising out of general physical debility so certified by Coal Company concerned, not arising out of injury or disease as Para (i) above, the concerned employee will be eligible for the benefit under this Clause if the employee is upto the age of 58 years.
- (iii) The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, younger brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the employee and almost wholly dependent on the earnings of the employees may be considered.
- (iv) The dependant to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit shall not apply in the case of spouse.”

18. From the aforesaid provision it is clear that this envisages two types of disablement, first from injury or disease which is of permanent nature resulting into loss of employment second is disablement arising out of general physical debility not arising out of injury or disease as mentioned in para. (i) of the Clause. No time limit for filing application under para (i) of this clause has been prescribed though for claiming benefit for disablement coming under para (ii) of the clause the application should be filed before the concerned workman reached the age of 58 years. But the workman clearly had claimed disablement on account of a disease which he had named in his application. Therefore, the workman did not claim disablement

arising out of general physical debility. Therefore age limit of 58 years is not applicable in the case of the present workman.

19. My attention has been drawn towards Ext. M-4 which is dated 9/10-4-80, a circular issued by the General Manager (Personnel), to all the General Managers, Colliery Managers and Head of Departments. Sri S. N. Sinha, learned Advocate appearing for the management has admitted that this circular was in force on the date the concerned workman had applied to be examined by the Apex Medical Board. According to this circular, a workman claiming benefit under clause 10.4.3 of N.C.W.A. II (corresponding to clause 9.3.3 of NCWA IV) should be subject to medical examination and be sent for medical examination at Central Hospital, Kustore. It was made clear that after the workman was declared medically unfit to discharge his normal duty the case for employment of his dependant may have to be considered.

20. But in this case the management, knowing that the concerned workman was ailing and was being medically treated at different hospitals of the company, did not concede to the request of the workman for being placed before the Apex Medical Board for examination of his health. It is not very material that in his explanation the workman did not write in so many words that he wanted to face the Medical Board for securing benefit under clause 9.4.3 of N.C.W.A. IV for his dependant. It is clear from the written statement of the management that it was within its knowledge that the workman had sought to be examined by the Apex Medical Board for securing benefit under clause 9.4.3 of N.C.W.A. III. In para 7 of its written statement the management has stated as follows :

“...and Union was pressing upon the management to refer his case to Apex Medical Board to get him declared medically unfit so that he could get the benefit of clause 9.4.3 of N.C.W.A. III.....”

21. Well there was also a circular that a workman claiming benefit under the aforesaid provision of N.C.W.A. II should be sent for medical examination, the refusal by the management to do so in the particular case appears to be arbitrary and unjustifiable. The question was only of sending the workman to the Medical Board for his examination. Sending a workman to the Medical Board does not mean that the Board was bound to declare him medically unfit to perform his job. The Board, after examination of the workman, could have held otherwise also. But the possibility cannot be ruled out that if the workman was sent to the Medical Board, he might have been found to be permanently disabled, because of disease, to do his official duty which finding would have allowed the concerned workman to go for the benefit under clause 9.4.3 of N.C.W.A. IV. This was particularly so when the concerned workman admittedly was ailing and was ailing so much that for about last two years of his service he could not join duty even for a day. The management could not argue that since in their wisdom they did not consider it to send the concerned workman to the Apex Medical Board, that decision of the management automatically disentitled the workman to take benefit under clause

9.4.3 of N.C.W.A. IV. Such specious argument, if accepted, would provide arbitrary powers to the management so much so that it could d'sentile, even in a genuine case, a workman from getting benefit of aforesaid clause by simply refusing to send him to the Apex Medical Board.

22. Though the workman has filed medical certificate dated 10-4-87 from a Civil Asstt. Surgeon certifying that the workman was suffering from chronic bronchial asthma and was permanently unfit to work, I have not discussed that certificate seriously because on the merit of the case itself I find that the action of the management was not justified.

23. If the action of the management was not justified then only benefit that can be granted to the workman is the one provided under clause 9.4.3 of N.C.W.A. IV. In other words it has to be held that a dependant of the concerned workman, if otherwise fit, was entitled to employment in the company as provided under clause 9.4.3 of N.C.W.A. IV.

24. Following is the award—

The action of the management of Bastacolla Area of M/s. B.C.C. Ltd. in denying benefit of Para 9.4.3 of NCWA-III to Baidyanath Mitra by not referring him to Medical Board was not justified.

A dependant of the concerned workman, since deceased, as described in Para (iii) of Clause 9.4.3 of N.C.W.A. IV, is held to be entitled to employment in the Company provided he fulfils the criteria laid down in Para (iv) of the aforesaid clause. Since the concerned workman has expired there may be more than one dependants of the deceased who may come forward claiming employment. In that case the management shall be free to employ one of them which management may find most suitable for the job, giving preference to the widow of the deceased workman and, after her, to a son or a daughter of the deceased workman.

There would be no order as to the cost.

P. K. SINGHA, Presiding Officer

दई दिल्ली, 8 जून, 1995

सा. 1830.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में सेंट्रल कोलफील्ड्स लिमि. की सविन सार्थ कोलियरी के प्रबंधन के संबंध विद्योक्तों और उनके पारिवारिकों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में, केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-6-95 को प्राप्त हुआ था।

[सं. एन-24012/16/87 सी-1 (बी) आर्बिटर (कोल-I)]
हज़र मोहन, ईमक अधिकारी

New Delhi, the 8th June, 1995

S.O. 1830.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial

Tribunal, (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tapin North Colliery of C.C.L. and their workmen, which was received by the Central Government on 7-6-95.

[No. L-24012/16/87-DIV(B)|IR(Coal-I)]

BRAJ MOHAN, Desk Officer
ANNEXURE

Before the Central Government Industrial Tribunal
(No. 2) at Dhanbad

PRESENT

Shri D. K. Nayak,
Presiding Officer

In the matter of an Industrial dispute under Section 10(1) (d) of the I.D. Act, 1947.

Reference No. 257 of 1987

PARTIES :

Employers in relation to the management of Tapin North Colliery of C.C. Ltd. P.O. Tapin North, Distt. Hazaribagh and their workmen.

APPEARANCES :

On behalf of the employers : Shri B. Joshi,
Advocate.

On behalf of the workmen : None.

State : Bihar.

Industry : Coal.

Dated, Dhanbad, the 29th May, 1995

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(16)|87-DIV(B), dated, the 13th September, 1987.

SCHEDULE

"Whether the action of the Management of Tapin North Colliery of C.C. Ltd., P.O. Tapin North, Distt. Hazaribagh in denying regularisation of Sri Mohd. Yunus Mian, Driver for the last more than 3 years and not granting him annual increment, other dues etc. is legal and justified? If not, to what relief the concerned workman is entitled?"

2. This reference is pending since 1987. It reveals from the records of this case that on several dates regd. notices were duly served upon the workmen for their appearance and necessary steps but the workmen neither turned up nor took any steps. The learned Advocate for the management

all along made his appearance. Therefore, it leads to draw an inference that there is no dispute existing between the workmen and the management at present. In the circumstances, I have no other alternative than to pass 'No dispute' Award in this reference.

Date : 29th May, 1995.

D. K. NAYAK, Presiding Officer

नई दिल्ली, 14 जून, 1995

का. आ. 1831.—केन्द्रीय सरकार में यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित है कि इंडिया गवर्नमेंट मिनट, नोएडा को, जो औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची में निर्दिष्ट है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवा घोषित किया जाना चाहिए।

अतः अब औद्योगिक विवाद अधिनियम, 1947 की धारा 2 के खंड (ठ) के उपखंड (vi) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस. 11017/1/94-आई.आर. (पी. एल. :)]

एस. वेणुगोपालन, अवर सचिव

New Delhi, the 14th June, 1995

S.O. 1831.—Whereas the Central Government is satisfied that the public interest requires that the India Government Mint, NOIDA which is specified in the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purposes of the said Act;

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act for a period of six months.

[No. S-11017/1/94-IR(PL)]

S. VENUGOPALAN, Under Secy.

नई दिल्ली, 14 जून, 1995

का.आ. 1832.—केन्द्रीय सरकार में यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (ठ) के उपखंड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय को प्रतिबुद्धता नश्वर का.आ. 46 दिनांक 22 दिसम्बर, 1994 द्वारा बैंक नोट प्रेस, देवास (मध्य प्रदेश) को उक्त अधिनियम के प्रयोजनों के लिए 27 दिसम्बर, 1994 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था,

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि की छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है,

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (ठ) के उपखंड (vi) के उपखंड द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोग के लिए 27 जून, 1995 से छः मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस.—11017/14/85-डी-1(ए)]

एस. वेणुगोपालन, अवर सचिव

New Delhi, the 14th June, 1995

S.O. 1832.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provision of sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the notification of the Government of India in the Ministry of Labour S.O. No. 46 dated the 22nd December, 1994 the Bank Note Press, Dewas (MP) to be a public utility service for the period of six months, from 27th December, 1994;

And whereas, the Central Government is of opinion the public interest requires that extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act, for a further period of six months from the 27th June, 1995.

[No. S-11017/14/85-D.I(A)]

S. VENUGOPALAN, Under Secy.

नई दिल्ली, 15 जून, 1995

का.आ. 1833.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उपखण्ड अधिकारी, टेलीफोन विभाग, बांसवाड़ा के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, उदयपुर के पंचवट को प्रकाशन करती है, जो केन्द्रीय सरकार को 2-6-95 को प्राप्त हुआ था।

[संख्या एल-40012/49/90—आई.आर. (डी. यू. :)]

वि. एम. डेविड, डेस्क अधिकारी

New Delhi, the 15th June, 1995

S.O. 1833.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of SDO, Telephone Deptt. Bashwatha and their workmen, which was received by the Central Government on 2-6-95.

[No. L-40012/49/90-IR(DU)]

B. M. DAVID, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर (राज.)
पिठासीन अधिकारी श्री ओम प्रकाश गुप्ता, आर.एस.जे.एस

प्रकरण संख्या 4 मनु 93

कानूनी पुत्र श्री गौतम, निवास मातोबाबा पोस्ट कानूनी का आंश जिला
बांसवाड़ा

—पार्थी

सनाम

श्री उपखण्ड अधिकारी, टेलीफोन विभाग बांसवाड़ा

—विजय

प्रकरण संख्या 5 मनु 93

श्री विजय लाल पुत्र विठ्ठल श्री निवानी माकोदा जिला बांसवाड़ा—पार्थी

बनाम

श्री उपखण्ड अधिकारी, टेलीफोन विभाग, बंसवाड़ा, (राज.) --विपक्षी
प्रकरण संख्या
6 सन् 93

श्री शम्भु सिंह पुत्र श्री लक्ष्मण सिंह मार्फत गोपाल सिंह ब. थो. क. सहायक
श्रम सम्बन्धित कार्यालय, बंसवाड़ा --प्रार्थी

बनाम

श्री एम.डी.जी.टी. टेलीफोन विभाग, बंसवाड़ा (राज.) --विपक्षी
उपस्थित:

श्री शिवप्रसाद जोशी, प्रार्थी की ओर से।

श्री इन्द्र कुमार भट्ट, विपक्षी की ओर से।

दिनांक: 20.11.95

पंचाट

उपन सभी प्रकरणों में विवेचन के लिए समान मुद्दा होने से व दोनों पक्षकारों के समान तर्क होने से एक ही निर्णय द्वारा निम्नान्वित किये जाते हैं। मूल निर्णय प्रकरण संख्या 4/93 में पारित किया जाता है जिसकी प्रति अन्य प्रकरणों में रखी जाये।

प्रकरण संख्या 4/93 के तथ्य इस प्रकार हैं कि श्रम मन्त्रालय, भारत सरकार के आदेश क्रमांक एल.-40012/49/90-आई.आर. (डी.यू.) दिनांक 30.11.90 के द्वारा निम्न बिन्दु अभिनिर्धारित हेतु अधिकरण से प्राप्त हुआ है:

"Whether the action of sub-divisional officer (Telegraph) in terminating the services of Shri Kanja s/o Shri Gautam is justified? If not to what relief the Concerned workman is entitled to?"

पृथ में केन्द्रीय औद्योगिक न्यायाधिकरण द्वारा नोटिफ़ाइड एवाइड पारित कर दिया गया जो बाद में निरस्त किया गया।

प्रार्थी ने अपने स्टेटमेंट आफ क्लेम में अंकित किया है कि उसने 17.11.87 तक विपक्षी संस्था के अधीन निरन्तर कार्य किया और दस दिन बिना बिजुल करण्ड लगने से दुर्घटनाग्रस्त हो जाने से बचाव में स्थाई शारीरिक अक्षमता व आय अर्जन में 30 प्रतिशत की कमी हो गई और स्वस्थ होने पर जब पुनः काम पर उपस्थित हुआ तो विपक्षी ने कार्य पर नहीं लिया। यह भी उल्लेख किया है कि क्षतिपूर्ति कमिशनर का आदेश 23-11-89 को पारित हुआ है। काम पर नहीं लेने से पूर्व अर्थात् सेवा में हटाने से पूर्व सन् 1978 से 1987 तक की गई सेवा पर न तो कोई प्रेषण्टी बी गई है और न ही कोई मुआवजा दिया गया है। अतः विपक्षी के सेवामुक्ति के आदेश को अनुचित एवं अवैध घोषित करने हुए सवेतन पुनः सेवा में बहाल किये जाने के आदेश पारित किये जाने की प्रार्थना की है।

विपक्षी द्वारा जबाब में उल्लेख किया है कि आवश्यकतानुसार टेलीफोन विभाग में दैनिक बेतनभोगी के रूप में श्रमिकों को कार्य पर रखा जाता है। अपने चरण क्रम 2 में विभागीय रेकार्ड प्रदर्श-1 व प्रदर्श-2 के अनुसार प्रार्थी के द्वारा किये गये कार्य दिवसों का उल्लेख किया है और यह अंकित किया है कि प्रार्थी ने किसी भी वर्ष में 240 कार्य दिवस पूरे नहीं किये हैं। यह भी उल्लेख किया है कि श्रमिक प्रार्थी अपनी दुष्का-नुसार काम पर आता और काम पर आता छोड़ दिया, अर्थात् विपक्षी ने सेवामुक्ति किये जाने के तथ्या को अस्वीकार किया है।

प्रार्थी कानूजी ने स्वयं अपना एथ विपक्षी की ओर से राजेन्द्र प्रसाद उप खण्ड अधिकारी टेलीफोन विभाग का बयान दूया है और दोनों विद्वान अधिवक्ताओं ने उनसे जिरह की है। प्रत्येकीय साध्य में प्रदर्श-1 व 2 संख्या रेकार्ड पेश हुआ है।

प्रकरण संख्या 5/93 के तथ्य इस प्रकार हैं कि भारत सरकार के श्रम मन्त्रालय के पत्र क्रमांक एल-40012/47/90-आई.आर. (डी.यू.) दिनांक 20-11-90 के द्वारा निम्न बिन्दु अभिनिर्धारित हेतु प्रस्तुत हुआ है:

Whether the action of Sub-Divisional (Telegraphs), Banskawada in terminating the services of Shri Vijay Lal w.c.f. 22-11-87 is justified? If not, to what relief the workman is entitled to?

प्रकरण में पूर्व में नोटिफ़ाइड एवाइड पारित हुआ अनिर्स्त किया गया।

प्रार्थी ने स्टेटमेंट आफ क्लेम में अंकित किया है कि वह विपक्षी संस्थान में सन् 1981 में कार्य पर गया और उसका पद लाईनमैन का रहा। इस वर्ष माह अक्टोबर में केवल 8 दिन कार्य किया। सन् 1983 में विपक्षी संस्थान में 8 माह तक चौकीदार के पत्र पर कार्यरत होता रहा है और मस्टर रोल इन्चार्ज दया राम को बताया है। उसके उपरान्त 1-9-86 से 22.11.87 तक लगातार कार्यरत होता और 22.11.87 को मौखिक आदेश से हटा देना अंकित किया है। यह भी उल्लेख किया है कि 257 कार्य दिवस की सेवा करने के उपरान्त भी बिना नोटिस पत्र मुआवजा बिधे हटाने का विपक्षी का आदेश अनुचित एवं अवैध है और सवेतन सेवा में बहाल किये जाने के आदेश देने की प्रार्थना की है।

विपक्षी विभाग की ओर से यह उल्लेख किया गया है कि विभाग में आकिस्मिक कार्य हेतु आवश्यकतानुसार दैनिक बेतन के आधारे पर श्रमिक कार्य पर रखे जाते हैं और प्रार्थी को भी दैनिक बेतन भी होता एवं उसके द्वारा किये गये कुल कार्य दिवसों का विस्तृत विवरण जबाब के चरण क्रम 2 में अंकित किया है और किसी भी क्लेण्डर तथ में 240 दिन पूरा कार्य नहीं करना कहा है। यह भी उल्लेख किया है कि प्रार्थी श्रमिक को कर्मी भी नियमित कार्य पर नहीं रखा गया। सेवामुक्ति करने की तिथि को भी गलत बताया है। उनका कथन है कि प्रार्थी स्वयं ही कार्य पर उपस्थित नहीं हुआ।

प्रार्थी विजय लाल ने स्वयं का शपथपत्र एवं विभाग की ओर से राजेन्द्र प्रसाद उप खण्ड अधिकारी का शपथपत्र पेश हुआ है और दोनों ही बिरोधी अधिवक्तागण ने उनसे जिरह की है। प्रत्येकीय साध्य में प्रार्थी श्रमिक के द्वारा किये गये कार्य का विवरण प्रदर्श-1 व 2 पेश हुए हैं।

प्रकरण संख्या 6/93 में भारत सरकार के श्रम मन्त्रालय ने अपने पत्र क्रमांक एल-40012/78/92-आई.आर. (डी.यू.) दिनांक 10.11.83 द्वारा निम्न बिन्दु अभिनिर्धारित करने हेतु इस न्यायालय को अग्रपेक्ष किया है:—

Whether the action of Telecom Distt. Engineer, Banskawara and S.D.O. (T), Banskawara is terminating the services of Shri Shambhu Singh S/o Shri Laxman Singh is justified? If not, what relief he is entitled to?

प्रार्थी का स्टेटमेंट आफ क्लेम में अंकित करने के कि विपक्षी संग्रहात में बेतनार के पत्र पर उसकी नियुक्ति 9-9-86 को हुई था और तब से भी लगातार कार्यरत था एवं 17-11-87 को बिजुल करण्ड लगने से खरबे से नीचे गिरने से दुर्घटना घटी व हाथ की पात्र अनुनिर्वा काटी गई और स्वस्थ होने पर दिनांक 20-1-88 को पुनः कार्य पर उपस्थित हुआ तो विपक्षी ने कार्य पर लेने से मना कर दिया। अपने पत्र में मुआवजा कमिशनर का निर्णय 1-9-92 को होता भी अंकित किया है। व 240 कार्य दिवस में अधिक कार्य करने के उपरान्त भी और कार्य करने हुए चोटे लगने से शिकलांग हो जाने से प्राकृतिक एवं सामाजिक न्याय के अनुसार भी रोजगार पाने का अधिकारी होना कहा है एवं 25 एक के प्रावधानों की पात्रता लिए बिना अर्थात् नोटिस लिए बिना सेवा से हटाने में विपक्षी के आदेश को अनुचित एवं अवैध घोषित कर सेवा में सवेतन पुनः लिए जाने की प्रार्थना की है।

विपक्षी की ओर से जवाब में उल्लेख किया है कि विभाग में कार्य की आवश्यकतानुसार आकस्मिक दैनिक बेंचन होगी अधिक के रूप में रखे जाते हैं। प्रार्थी की लापरवाही से दुर्घटना कारित होना कहा है। क्षतिपूर्ति न्यायालय के आदेश की स्वीकार किया है। प्रार्थी द्वारा 240 कार्य दिवस पूर्ण कर लेने को न्याय की प्रसवीकार किया है। यह भी उल्लेख किया है कि काम पूरा हो जाने के साथ ही अधिक का सेवाएं समाप्त हो जाती है।

प्रार्थी ने स्वयं का शपथ पत्र एवं विभाग की ओर से राजेन्द्र प्रसाद का शपथ पत्र पेश हुआ। दोनों ही विरोधी अधिवक्ता द्वारा उनसे जिरह की गई। सेवा का विवरण प्रदर्श-1 व प्रदर्श-2 पेश हुआ है। क्षतिपूर्ति आयुक्त के निर्णय की प्रतिनिधि पेश हुई है।

बहुत अधिवक्तागण सुनो गई। प्रार्थी का तर्क है कि विपक्षी के द्वारा जो जवाब पेश किया गया है वो पूर्ण नकारात्मक विषय का है। यह भी उल्लेख किया है कि सहायक अभिमान्य, कोटा की जो जवाब पेश हुआ उसमें अधि जवाब अधिकरण में पेश किया है। यह भी पेश प्रस्तुत किया है कि काम नहीं होने पर अधिकारी को काम पर नहीं लगाने ऐसा विपक्षी के शपथपत्र में कहे बयान से यह निष्कर्ष निकाला जाता कि काम नहीं होने पर वो अधिकारी की सेवाएं समाप्त करने थे। यह भी तर्क प्रस्तुत किया है कि सन् 1978 से 1987 तक लगभग 9 वर्ष तक अपनी सेवाएं देने के उपरान्त दुर्घटनाग्रस्त हो जाने से चार माह तक प्रार्थी के उपस्थित होने पर विभाग का दायित्व था कि वह उनका चिकित्सा प्रभाव पत्र लेकर सेवा में रखता। यह भी तर्क प्रस्तुत किया है कि 1978 से 1987 तक की सम्पूर्ण अवधि का सेवा रिकार्ड बार-बार मांगे जाने के उपरान्त भी पेश नहीं किया गया है और यदि पेश किया गया होता तो वर्षवार सेवा देने, उठाए गए बेंचन, अनपस्थिति वी संख्या आदि का विवरण मिलता और यह स्पष्ट हो जाता कि वास्तव में अधिक ने 240 कार्य दिवस की सेवा की है या नहीं।

विजय साल के बारे में विद्वान अधिवक्ता प्रार्थी का तर्क है कि दिनांक 25-11-87 से पिछले 12 माह का रिकार्ड पेश किया है जो विभाग द्वारा स्थापित एवं हस्ताक्षरित है। इस रिकार्ड के विपरीत विभाग ने शपथपत्र में 240 कार्य दिवस होने का गम्भीर बयान किया है। विद्वान अधिवक्ता का तर्क है कि नवम्बर 1987 से पिछले 12 माह अर्थात् दिसम्बर, 1986 तक के कार्य दिवसों को जोड़ने पर अधिक द्वारा 257 कार्य दिवस पूर्ण कर लेना और धारा 25 (बी) के तहत सेवा की निरन्तरता की आवश्यक शर्त पूरी कर लेना प्रमाणित है।

शंभु सिंह के बारे में उनका तर्क है कि भूआवृत्ति की राशि प्रार्थी के द्वारा प्राप्त कर ली गई है। विद्वान अधिवक्ता का तर्क है कि आकस्मिक क्षतिपूर्ति न्यायालय के द्वारा पारित निर्णय से यह सिद्ध हो जाता है कि 19-1-88 तक निमित्तिय देखरेख में रहा और ठोक होने पर पुनः सेवा पर उपस्थित हुआ। विद्वान अधिवक्ता का तर्क है कि दुर्घटना व बीमारी के कारण कोई कामगार कार्य पर नहीं जा पाता है तो उस अवधि को भी धारा 25(बी)(1) के तहत सेवा की निरन्तरता की गणना में जोड़े जाएंगे। उनका यह भी तर्क है कि रविवार व अन्य अवकाश के दिन जोड़ देने से भी प्रार्थी के 240 कार्य दिवस पूरे हो जाते हैं।

विद्वान अधिवक्ता विपक्षी ने गंभीर रूप से यह तर्क प्रस्तुत किया है कि मनी कमेचारी आकस्मिक कार्य हेतु दैनिक बेंचन पर लगाए गए थे और वे स्वेच्छा से कार्य पर उपस्थित होते थे और स्वेच्छा से ही कार्य पर नहीं आते तो विद्वान अधिवक्ता विपक्षी का यह तर्क है कि प्रार्थीगण नियमित सेवा में नहीं थे। उनका यह भी तर्क है कि निर्मा भी अधिक के निर्मा भी केलेण्डर वर्ष में 240 कार्य दिवस पूरे नहीं हो पाते माना जा सकता है। उनका यह भी तर्क है कि विपक्षी के द्वारा प्रार्थीगण की सेवाएं समाप्त नहीं की गई है बरत इस अधिकारी को कार्य पर उपस्थित नहीं होने। इस आधार पर विद्वान अधिवक्ता का यह तर्क है कि कार्य की समाप्ति के

साथ ही प्रार्थीगण की सेवाएं स्वतः ही समाप्त हो जाने से तथा किसी भी केलेण्डर वर्ष में 240 कार्य दिवस की निरन्तरता में सेवा अधि पूर्ण नहीं करने से एवं प्रार्थीगण के द्वारा ही स्वेच्छा से कार्य छोड़ देने से विभाग की कोई पूर्व नोटिस देने अथवा भूआवृत्ति राशि प्रदा करने की आवश्यकता नहीं थी।

मैंने दोनों पक्षकारान के तर्कों पर गंभीरता से मनन किया। सर्व-प्रथम मैं प्रकरण के तथ्यात्मक विषय पर विवेचन करना चाहूंगा। प्रकरण संख्या 4/93 में कातगी ने अपने शपथपत्र में कहा है कि जमीन में केवल चलने के कार्य पर 1978 में 5 स० प्रतिदिन की मजदूरी पर रखा था। 17-11-87 को विद्युत तंत्र से दुर्घटनाग्रस्त हुआ जिसकी क्षतिपूर्ति राशि प्रदा करने का आदेश 22-4-87 को हुआ और सन् 1978 से 1987 की अवधि की सेवा के लिए कोई ग्रेच्युटी नहीं देना और सेवा समाप्ति से पूर्व कोई नोटिस अथवा भूआवृत्ति राशि नहीं देना कहा है। साक्षी से हुई जिरह में यह स्वीकार किया है कि या बात सही है कि विभाग में काम बन्द हो गया इसलिए मुझे काम लेना बन्द कर दिया। मैं मस्टर रोल पर था। जब मैं जाता था हाथी लगती थी। प्रदर्श-1 के अनुसार काम करना सही माना है।

इसके विपरीत विभागीय साक्षी ने शपथपत्र के चरण क्रम 2 में प्रार्थी द्वारा किए गए कार्य दिवस का विवरण किया है और 240 कार्य दिवस नहीं होता कहा है। यह भी कहा है कि जब काम नहीं होता तो काम पर नहीं लगते। जिरह में स्वीकार किया है कि काम पर लगने का रिकार्ड प्रदर्श-1 व प्रदर्श-2 है। दिनांक 17-11-87 को दुर्घटना होता और प्रार्थी को पीटें लगने को स्वीकार किया है। प्रदर्श-ए-1 विभाग का होना और भूआवृत्ति क्षतिपूर्ति का देना ओ प्रदर्श-ए-1 के अनुसार देना स्वीकार किया है। यह भी स्वीकार किया है कि विभाग द्वारा कोई छुट्टी भूआवृत्ति नहीं दिया।

निष्ठाव रूप से प्रकरण में मूल मस्टर रोल पेश नहीं हुए हैं प्रदर्श-1 व प्रदर्श-2 विभाग ने वर्षवार प्रस्तुत किया है जिनके आधार पर सन् 85 में 54 दिन, सन् 86 में 91 दिन, और सन् 87 में 166 कार्य दिवस होना अंकित किया है। मैं इस संबंध में यह उल्लेख करना चाहूंगा कि धारा 25(बी) (2) के तहत जहाँ पर कि अधिकारी को नियमित सेवाएं नहीं होना माना गया हो वहाँ सेवा की निरन्तरता के लिए सेवा समाप्ति होने के पिछले 12 महीने की अवधि में किए गए कार्य दिवस की गणना की जाती है। प्रस्तुत प्रकरण में प्रार्थी को आकस्मिक दैनिक बेंचन होगी अधिक कार्य की आवश्यकतानुसार माना गया है और विभागीय साक्षी ने जिरह में 17-11-87 को दुर्घटनाग्रस्त हो जाने और उसके बाद काम बन्द होने से काम पर नहीं आने का तथ्य कहा है। इसमें यह स्पष्ट है कि अंतिम कार्य दिवस 17-11-87 बिना रहित है क्योंकि प्रार्थी भी यही कहता है और विभागीय साक्षी भी इसी को स्वीकार करता है तथा कमिशनर क्षतिपूर्ति न्यायालय ने भी अपने निर्णय में इसका उल्लेख किया है। अतः विभागीय रिकार्ड प्रदर्श-1 व प्रदर्श-2 की यदि हम स्वीकार करें या गणना करें तो नवम्बर, 87 के पिछले 12 माह अर्थात् 86 तक माने जाएंगे और इस आधार पर 166 (1987) के कुल कार्य दिवस एवं सन् 86 के 65 कार्य दिवस माने जाएंगे। जिसकी जोड़ भी 231 कार्य दिवस पिछले 12 महीने में होता बिना रिकार्ड से प्रमाणित है। रविवार के अवकाश एवं अन्य राजाविवरण राष्ट्रीय अवकाश शामिल नहीं है और बिना ब्याख्या है सन् 240 कार्य दिवस पूर्ण कर लेना प्रमाणित पाया जाता है। मैं यह उल्लेख करना चाहूंगा कि विद्वान अधिवक्ता विपक्षी ने यह तर्क प्रस्तुत किया है कि जब तक अवकाश का दिवस पेड दिवस न हो तब तक धारा 25 (बी) में परिभाषित वास्तविक कार्य दिवस के रूप में नहीं माना जा सकता। परन्तु निर्मा ने ऐसा कोई मास्टर रोल रिकार्ड पेश नहीं किया है और न ही ऐसी कोई अन्य प्रमाण प्रस्तुत कराया है कि अवकाश के दिवस पेड दिवस नहीं थे। न्यायालय बेंचन निर्वाचित करने में अवकाश के दिन को शामिल करने हुए उ. विनय की

भुगतान अक्षमता की जाँची है। जैसी बात से इस बात का स्पष्ट साफ होनी चाहिए कि भुगतान के बिना भुगतान रहित दिवसों से सब ही हमका साथ किया जा सकता है।

विजय लाल ने अपने सपपत्र से सन् 1981 में आर्शन मेन के पद पर कार्यरत होकर माह अक्टूबर में आठ दिन कार्य करना और सन् 83 में ओपीआर के पद पर कार्यरत होकर 8 माह कार्य करना तथा 1-3-86 से 22-11-87 तक निरन्तर सेवा में कार्यरत होना कहा है। जिरह में स्वीकार किया है कि विभाग में कार्य बन्द होने पर काम लेना बन्द कर दिया। मस्टर रोल पर काम करना और प्रदर्श-1 व 2 के अनुसार कार्य करना स्वीकार किया है। विभागीय माधो ने इसी रेकार्ड के आधार पर किए गए कार्य दिवसों का विवरण कर 240 कार्य दिए गए केलेण्डर वर्ष में नहीं होना कहा है। जिरह में स्वीकार किया है कि प्रदर्श-1 व 2 काम का रेकार्ड है और छठी मंजूरी नहीं दिया गया।

जैसा कि मैंने ऊपर विवेचन किया है, इस अधिकारी की स्थिति भी उनकी तरह की है और हस्त धारा 25 (बी) (1) (2) के तहत सेवा की निरन्तरता आंकते के लिए पृथक्पृथक् कार्य दिवसों का जैसा कि विभाग में उल्लेख किया है विचार नहीं किया जाना चाहिए। यद्यपि सेवा समाप्ति के पिछले 12 महीने के अन्तराल में प्रार्थी अधिकारी के 240 कार्य दिवस पूर्ण होते हैं तो वह सेवा की निरन्तरता में माने जाते हैं। विभागीय रेकार्ड प्रदर्श-1 व प्रदर्श-2 के अनुसार नवम्बर, 87 से नवम्बर, 86 के पिछले 12 महीने के कार्य दिवसों की जोड़े तो 281 कार्य दिवस हो जाते हैं। अतः इस तर्क के निषेध में 240 कार्य दिवस पूर्ण करने के बारे में कोई विवाद नहीं है और विज्ञान अधिकारी अधिष्ठाता का यह तर्क है कि एक केलेण्डर वर्ष में 240 कार्य दिवस पूरे नहीं होने के तर्क को मैं विधि प्रावधानों के तहत स्वीकार करने में असमर्थ हूँ।

शंभु सिंह ने अपने शपथपत्र में 9-5-86 की वेतनवार के पद पर नियुक्त होकर 17-11-87 तक विद्युत करंट से दुर्घटनाग्रस्त होने तक निरन्तर सेवा में कार्यरत होना कहा है। जिरह में प्रमाण बर्ती समान पधियों का उल्लेख हुआ है जो ऊपर अधिकारी के विवेचन के साथ कहे हैं। मैं यह विवेचन करना चाहूँगा कि विभागीय प्रवेश प्रदर्श-1 व प्रदर्श-2 की सेवा हुए हैं उनमें सन् 87 में 185 कार्य दिवस एवं अक्टूबर एवं नवम्बर के 42 कार्य दिवस बनाकर अंकित किया है। इनकी जोड़े तो 227 कार्य दिवस हो जाते हैं और यदि इन कार्य दिवसों में एक्स्ट्रा या रात्रिपत्रित अथवा अन्य कोई जाय पधियाँ प्रार्थी के जोड़कर होने पर उपचार श्रेष्ठ अस्पताल में भर्ती रहने की अवधि के कार्य दिवसों की जोड़े लिए जाएं तो हस्त धारा 25 (बी) (1) (2) के तहत परिभाषित सेवा की निरन्तरता के लिए 240 कार्य दिवस पूर्ण करने में कोई विवाद नहीं पड़ता है। प्रार्थी की सेवा में होने पर 17-11-87 को विद्युत करंट से दुर्घटनाग्रस्त होने का तथ्य पूर्ण प्रमाणित है। इस आशय का तथ्य विपक्षी के द्वारा स्वीकार किया गया है और कमिशनर अभिलेखि न्यायालय द्वारा मंजूरी दी जाए जाने का आदेश भी पारित हुआ है।

अन्य तथ्यात्मक विवेचन में जो तथ्यात्मक निकाय है उनके आधार पर -

1. कानूनी प्रावधानों में कि सेवागत होने हुए विद्युत करंट लगने से दुर्घटनाग्रस्त हुए हैं तथा शपथपत्र के द्वारा विपक्षी संस्था से 240 कार्य दिवस की सेवा अवधि उनकी अंतिम सेवा तिथि से पूर्व के 12 महीनों में कर लेना प्रमाणित पाया जाता है।

2. प्रार्थीगण की कोई मंजूरी नहीं दी गई है, यह तथ्य विपक्षी माधो ने जिरह में स्वीकार किया है।

3. कानूनी एवं शपथपत्र से दुर्घटना के उपरान्त स्वस्थ होने पर पुनः कार्य पर उपस्थित होने का कहा है और यह भी कहा है कि उन्हें कार्य पर नहीं लिया गया।

4. विपक्षी के द्वारा की प्रतिक्रिया के साथ लिए गए हैं उन्हें भी प्रमाणित पद मोड़कर वापस के आधार पर निकाला नहीं मानता। क्योंकि हस्त धारा 2 (आ. ओ.) (बी. बी.) के अन्वय में प्रतिक्रिया का कथन इसलिए स्वीकार नहीं किया जा सकता कि ऐसी कोई नियुक्ति अदेश एवं मस्टर रोल पेश नहीं हुआ है जिसमें यह निष्कर्ष निकाला जा सकता कि अधिकारी की नियुक्ति कार्य विशेष अथवा अतिरिक्त कार्य की अतिरिक्त पदों के साथ थी और उसके समाप्ति होने के साथ ही सेवा समाप्त हो गई। मैं इन प्रतिक्रिया के कथन को इसलिए स्वीकार नहीं करता कि अधिकारी की कार्य पर नहीं आते, उनकी सेवाएं विपक्षी के द्वारा समाप्ति नहीं की गई, यह तथ्य प्रमाणित है। सामान्यतया लिया जाता है परन्तु माननीय अतिरिक्त न्यायालय एवं विभिन्न उच्च न्यायालयों ने यह विधि व्याख्या की है कि मस्टर रोल से नाम हटाने अथवा उपस्थिति पंजीकन में हजरी नहीं दर्ज करने के विभागीय कृत्य की सेवामुक्ति की सेवा में ही माना है।

वैधानिक स्थिति के अनुसार आकस्मिक रूप से कार्यरत दैनिक वेतन भोगी की भा आर्थोपिक विवाद अधिनियम की परिभाषा में अधिक माना है और यदि हस्त धारा 25 (बी) (1) (2) के तहत सेवा में निरन्तरता सिद्ध हो जाती है अर्थात् सेवा समाप्ति करने से पूर्व 12 महीने के अन्तर 240 कार्य दिवस की सेवा अवधि पूर्ण कर लेना सिद्ध हो जाता है अथवा किसी एक केलेण्डर वर्ष में 240 कार्य दिवस सेवा अवधि पूरी हो जाती है तो ऐसे अधिकारियों की सेवाएं समाप्ति करने से पूर्व विपक्षी की हस्त धारा 25 एक के प्रावधानों की पालना करना अनिवार्य माना गया है।

तब तो अधिकारियों ने 240 कार्य दिवस सेवा समाप्ति किए जाने की तिथि के पूर्व के 12 महीने में कर लिए हैं, यह ऊपर दिए गए विवेचन से सिद्ध है।

महीने में 26 कार्य दिवस विपक्षी ने रेकार्ड से दर्शाए हैं और यह इस बात का प्रमाण है कि वे पद दिए गए प्रमाण के तहत परन्तु भुगतान एवं मस्टर रोल और भुगतान यादगिर पेश नहीं हुए हैं और यह निष्कर्ष नहीं निकाला जा सकता कि प्रमाण के बिना पद दिए नहीं हैं। उसके अतिरिक्त मैं यह भी विवेचन करना चाहूँगा कि दैनिक वेतन भोगी कर्मचारियों को जो प्रतिदिन का वेतन दिया जाता है उसकी गणना में अवकाश के दिनों का वेतन शामिल करते हुए साल कार्य दिवस का मानक निकाल कर एक दिवस का वेतन तय किया जाता है। सन् 86 में मैंने दैनिक वेतन भोगी कर्मचारियों को दिए जाने वाले अवकाश की पेश प्रमाण के रूप में ही माना जाएगा।

विजय लाल के कार्य दिवस के बारे में तो कोई विवाद ही नहीं है। शम्भु सिंह एवं कानूनी के कार्य दिवसों के लिए हस्त धारा 25 बी के तहत सेवा की निरन्तरता के लिए कार्य दिवस आकाश किए। विद्युत करंट से दुर्घटनाग्रस्त होने पर उपचार में व्यतीत हुए कार्य दिवसों की सेवा अवधि के रूप में ही माने जायेंगे। अतः कि भी तरीके से निकाले तो 240 कार्य दिवस सेवा प्रमाणित माना जाता है।

ऐसी स्थिति में इनकी सेवा मुक्ति के अदेश की हस्त धारा 25-क के प्रावधानों की अतिरिक्त पदों के पालना के बिना अधिक एवं वैध नहीं ठहराया जा सकता।

विज्ञान अधिकारी विपक्षी ने संश्लेषण से यह बात प्रमाणित किया है कि प्रार्थीगण ने सेवा समाप्ति के पश्चात् बाद विवाद उत्पन्न नहीं किया है और शपथपत्र के अन्तर्गत वापस लाने की अनिवार्यता को कठोर प्रमाण के साथ साबित किया है। पदों की पेश की देने के विवेचन के तहत कोई भी वेतन नहीं दिया जाये और उनका यह भी तर्क है कि वे विद्युत करंट से पूर्व में पारित हो चुका है। अतः यदि सेवा में वेतन दिया जाता है तो कोई भी वेतन नहीं दिया जायेगा।

मेरी प्रतिक्रिया ने अन्तर्गत अधिनियम की धारा 25-क के अन्वय में विज्ञान अधिकारी माधो ने पेश की गई सामान्यतया उच्च न्यायालय के विनिर्णयों के अनुसार तब परन्तु विज्ञान है कि यदि अधिकारी की सेवा समाप्ति के बाद एवं नियम होने की अवधि के साथ साथ अर्थात् कि

जाता निश्चित साध्य का प्रभाव है तो पूर्ण सतत माघ के साथ ही सेवा कर्ताओं के आदेश पालन किए जाने चाहिए।

प्रकरणों में तीनों अधिक मजदूर हैं और सेवा समाप्ति के समय से निर्णय पालन करने की तिथि तक उन्होंने अत्यन्त मजदूरी न की होगी यह नहीं माना जा सकता। इन मजदूरों के द्वारा कहीं पर भित्तों के किनारे से मजदूरी की गयी ऐसी माध्यमियों के लिये प्रस्तुत करना में व्यावहारिक रूप से कठिन मानता हूँ। मजदूरों की घुमक्कड़ प्रकृति को श्रम कानून में स्वीकार किया गया है। अतः परिस्थितियों पर विचार कर मैं केवल आधा वेतन दिलाया जाता है। न्यायोचित माना है।

अदिश

उपरोक्त तीनों प्रकरणों के प्रार्थीगण सर्वश्री कानूनी विजयलास व शम्भु भिन्न की सेवा मुक्ति के आदेश को अनुचित एवं अवैध माना जाता है उन्हें तुरन्त प्रभाव से सेवा में लिये जाने के आदेश दिये जाने

हैं। सेवा समाप्ति से सेवा में लिये जाने की अवधि का भित्तों वाले वेतन का माघा वेतन ही दिलाया जाना है।

प्रार्थीगण की यह अवधि भावी सेवा लाभों के लिये सेवा की निरन्तरता में आंकी जाएगी। कपाया वेतन का मुगलान तीन माह की अवधि में किया जावे अन्यथा प्रार्थीगण को 12 प्रतिशत वार्षिक की दर से व्याप्त पाने का अधिकार होगा। प्रत्येक प्रकरण में खर्च मुकदमा 300/- 300/- रुपये दिलाया जाता है।

पचाट सूचनार्थ एवं प्रकाशनार्थ राज्य सरकार को प्रेषित हो।

पचाट आज दिनांक 23-5-1995 की खुले न्यायालय में लिखवाया जाकर सुनाया गया।

आम प्रकाश गुप्ता, न्यायाधीश